Supreme Court, U.S.
FILED
AUG 13 2007
OFFICE OF THE CLERK

No. 07-412

In The

SUPREME COURT OF THE UNITED STATES

PETER JOHN JONES,

Petitioner,

v.

THE STATE OF MINNESOTA,

Respondent.

On Petition for Writ of Certiorari
To: The Supreme Court of Minnesota.

Counsel for Petitioner:

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Questions for Review

Whether the State of Minnesota has jurisdiction to enforce its statute requiring registration of persons designated as "predatory offenders" against Indians who reside in Indian Country as either a "criminal/prohibitory" statute or as an "exceptional" circumstance?

Table of Contents and Authorities:

Not applicable.

Citations of Decisions:

State of Minnesota v. Peter John Jones, 729 N.W.2d 1 (Minn. 2007).

State of Minnesota v. Peter John Jones, 700 N.W.2d 556 (Minn. App. 2005).

Jurisdictional Statement:

(i) Judgment by Clerk of Appellate Courts Entered: May 14, 2007.

(ii) Subsequent Orders: None.

(iii) Jurisdiction pursuant to 28 U.S.C. 1257

Constitutional Provisions and Statutes:

18 U.S.C. Section 1162 (2000).

Minnesota Statute 243.166 (2003).

See Appendix.

Statement of the Case

Peter John Jones is an enrolled member of the Leech Lake Band of Chippewa Indians who resides on the Leech Lake Indian Reservation in Cass County, Minnesota. Jones is designated a "predatory offender" by Minn. Stat. 243.166 (Predatory Offender Registration Statute) by virtue of his prior conviction for kidnapping. Jones was charged with failure to register as a predatory offender for not complying with the registration requirements of the statute. At a pre-trial hearing, Jones moved the trial court to dismiss the charges for lack of subject matter jurisdiction on grounds the statute was civil/regulatory in nature and Minnesota lacked jurisdiction to prosecute him under Public Law 280.

The trial court agreed that Minnesota lacked jurisdiction and dismissed the charges. "Because Public Law 280 limits the State's general regulatory authority, the State lacks jurisdiction to impose criminal penalties on residents of Indian reservations for violations of predatory offender registration statutes." Trial Court Order, Appendix at. 7.

The State appealed to the Minnesota Court of Appeals which also found the Predatory Offender Registration Statute was civil/regulatory and Minnesota lacked jurisdiction under Public Law 280, 18 U.S.C. 1162.

The State petitioned the Minnesota Supreme Court for a writ of certiorari. The Minnesota Supreme Court granted the writ and issued a fragmented decision. The majority (three justices) ruled Minnesota had jurisdiction because the Predatory Offender Registration Statute was criminal prohibitory. The concurrence (two justices) ruled Minnesota had jurisdiction because the Predatory Offender Registration Statute invoked "exceptional circumstances" outside of the Public Law 280 express grant of jurisdiction. The minority opined that Public Law 280 did apply, the Predatory Offender Registration Statute was civil/regulatory and Minnesota lacked jurisdiction.

ARGUMENT

The Minnesota Supreme Court's decided an important question of federal law that has not been, but should be decided by this Court. The controlling concurrence found Minnesota had jurisdiction due to the existence of "exceptional circumstances" but specifically recognized that "The Supreme Court has offered no guidance into which cases are "exceptional". *State v. Jones*, 728 N.W. 1, 12 (Minn. 2007). While there is a state interest in tracking people who have been convicted of predatory crimes in order to investigate other possible offenses, this must be balanced against an individual's right to privacy and not be obligated under threat of imprisonment to report his or her residence to law enforcement authorities. Furthermore the Adam Walsh Act, 42 U.S.C. 16901-16991, addresses this "exceptional circumstance" and creates federal penalties for failure to register by predatory offenders. This eliminates any critical need for the states to intervene in tribal sovereignty in these matters.

This case also implicates the important question under *California v. Cabezon Band of Mission Indians*, 480 U.S. 202 (1987) in determining what offenses are civil/regulatory versus criminal/prohibitory in nature within the issues of interpreting federal Indian law. States pass more and more laws each year creating new criminal penalties for both acts and omissions. This case involves a felony prosecution for a person failing to register his address with the State, even though Jones was under no form of probation or court ordered supervision. The current state of the law for enforcement of these types of statutes in Indian country is muddled, as demonstrated by a wildly split Minnesota Supreme Court which could not agree if the statue was civil or criminal in nature, and the swing votes dodged the issue entirely finding a results-oriented ground to reach a decision.

This decision by the Minnesota Supreme Court affects issues of state jurisdiction versus the sovereignty of the Indian tribes well beyond Jones' alleged failure to report his whereabouts to the local state authorities. If states are given permission to encroach on tribal sovereignty beyond that explicitly granted by the federal government whenever they determine an "exceptional" circumstance exists, states will undoubtedly make more and more "exceptional" mountains by legislatively redesignating mundane molehills. This unintended consequence must be stopped through the Court issuing clear instructions on the difference between civil and criminal jurisdiction in Public Law 280 states while providing a "bright line" test on "exceptional" circumstances that permit state action.

APPENDIX

A separate appendix will be filed.

Dated this 13th day of August, 2007.

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63

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PETER JOHN JONES,

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Table of Contents

Trial Court Order	1
State v. Jones, 700 N.W.2d 556 (Minn. App. 2005)	8
State v. Jones, 729 N.W.2d 1 (Minn. 2007)	16
18 U.S.C. 1162	53
Minn. Stat. 243.166	55
Entry of Judgment, May 14, 2007.	82

STATE OF MINNESOTA
COUNTY OF CASS

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

PETER JOHN JONES,

Defendant.

File No. K8-04-1154

ORDER

FILED
FEB 10 2005
COURT ADMINISTRATOR
CASS COUNTY

The above-entitled matter came on December 27, 2004 for a hearing before the Honorable John P. Smith of the above-named Court in the City of Walker, County of Cass, State of Minnesota, pursuant to Defendant's motion to dismiss for lack of subject matter jurisdiction. Plaintiff was represent by Christopher J. Strandlie, Assistant County Attorney, P.O. Box 3000, Walker, MN 56484. Respondent appeared through Blair W. Nelson, 1421 Bemidji Avenue N. Bemidji, MN 56601.

SUMMARY OF DECISION

Defendant's motion to dismiss for lack of subject matter jurisdiction is granted.

CONTENTIONS OF THE PARTIES

Defendant alleges that the charge of Failure to Register as a Predatory Offender under Minn. Stat. § 243.166 should be dismissed for lack of subject matter jurisdiction because the statute is regulatory in nature, and therefore beyond the scope of authority granted to the State under Public Law 280.

beyond the scope of authority granted to the State under Public Law 280.

The State contends that jurisdiction is proper because the statute is prohibitory in nature, and therefore within the scope of power granted to the State under Public Law 280.

ISSUE

Does the State have jurisdiction to prosecute the Defendant for failure to comply with the requirements of the predatory offender registration statute?

FINDINGS OF FACTS

Defendant Peter John Jones is an enrolled Leech Lake band member, living on Leech Lake Indian Reservation, Cass County, Minnesota. On or about July 2, 2001, Defendant completed a Predatory Offender Notification and Registration form as required by law, having been convicted of the felony of kidnapping. On July 21, 2003, Defendant completed a Change of Address form notifying the Minnesota Bureau of Criminal Apprehension (BCA) that his residential address was Unit 007, Pike Bay Township, P.O. Box 225, Cass Lake, in Cass County, Minnesota. On March 11, 2004, a Cass County Sheriff's Department employee, who was performing routine checks on the Cass County predatory offenders, discovered that Defendant appeared to be noncompliant with the registration requirement. Upon checking Defendant's last known address, Deputy Mutchler of the Cass County Sheriff's Office was informed that Defendant no longer resided at the last known address and his new address was 14669 65th Avenue NW, Cass Lake, in Cass County,

Minnesota. This information was forwarded to the BCA's Predatory Offender Registration Unit on March 30, 2004. The BCA sent verification letters to Defendant on March 30, 2004 and June 28, 2004. No verification has been received by the BCA from Defendant to date as required by law.

PRINCIPLES OF LAW

Minn. Stat. § 243.166, Registration of Predatory Offenders, provides in relevant part:

> A person shall register under this section if:
>
> (1) the person was charged with or petitioned for a felony violation of or attempt to violate any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:
>
> (ii) kidnapping under section 609.25

Minn. Stat. § 243.166, Subd. 1(1)(ii)(2004).

Minn. Stat. § 243.166, Subd. 3(b) provides that a person required to register as a predatory offender is guilty of a crime if that person fails to provide law enforcement with written notice of a change in primary address at least five days prior to establishing residence at the new address.

Minn. Stat. § 243.166, Subd. 4(e) provides that a person required to register as a predatory offender is guilty of a crime if that person fails to mail the completed and signed verification of address form to the Bureau of Criminal Apprehension within 10 days of receipt of the form.

Minn. Stat. § 243.166, Subd. 5 provides that a person required to register as a predatory offender is guilty of a felony if that person knowingly violates any of the provisions

of the statute or intentionally provides false information to a corrections agent, law enforcement authority, or the Bureau of Criminal Apprehension, and consequently may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

Public Law 280

State court jurisdiction over matters involving Indians is governed by federal statute or case law. Gavle v. Little Six, Inc., 555 N.W.2d 282, 289 (Minn. 1996). The Supreme Court has consistently recognized that Indian tribes retain "attributes of sovereignty over both their members and their territory." California v. Cabazon Band of Indians, 480 U.S. 202, 207, 107 S.Ct. 1083, 1087, 94 L.Ed.2d 244 (1987). However, a state may enforce its laws against enrolled tribal members on the tribal reservation if Congress has expressly so provided. Id. at 1087. In Public Law 280, Congress granted Minnesota broad criminal and limited civil jurisdiction over all Indian country within the state, with the exception of the Red Lake Reservation. Pub. L. No. 83-280, 67 Stat. 588-89 (1953) (codified as amended at 18 U.S.C. § 1162 (a) (2004). Sec. 2(a) of the Act provides Minnesota with "jurisdiction over offenses committed by or against Indians...and the criminal laws of the State ...shall have the same force and effect within such Indian country." Pub.L. No. 280 § 2(a), 67 Stat. 589 (1953) (codified as amended at 18 U.S.C. § 1162 (a) (2004)). Section 4(a) grants Minnesota jurisdiction over private civil litigation involving reservation Indians and arising out of Indian country. Pub.L. No. 280 §

4(a), 67 Stat. 589 (1953) (codified as amended at 18 U.S.C. § 1162 (a) (2004)). However, this section does not grant the state general civil regulatory authority. See Bryan v. Itasca County, 426 U.S. 373, 384-88, 96 S.Ct. 2102, 2108-11, 48 L.ED.2d 710 (1976). In order for a state law to be fully applicable to a reservation under the authority of Public Law 280, it must be a criminal law. Cabazon, 480 U.S. at 208, 107 S.Ct. at 1088. There is no bright-line rule which separates a criminal law from a civil law. Id. at 210, 107 S.Ct. at 1089. However, in Cabazon, the Supreme Court adopted the following test:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.

Id. at 209, 107 S.Ct. at 1088.

In order to aid Minnesota Courts in obtaining clear and consistent results when applying the Cabazon test, the Minnesota Supreme Court has adopted a two-step approach. State v. Stone, 572, N.W.2d 725, 730. The first step is to determine the focus of the Cabazon analysis....and the second step is to apply it. Id. If the conduct is generally permitted, subject to exceptions, then the law controlling the conduct is civil/regulatory. Id. If the conduct is generally prohibited, the law is criminal/prohibitory. Id.

Minn. Stat. § 243.166

When the Minnesota legislature enacted § 243.166, it did not indicate whether the statute was intended to be punitive or regulatory. In Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed.2d 644 (1963), the United States Supreme Court outlined the following factors to be used in analyzing whether statutes are punitive or regulatory in nature:

> Whether the sanction involves a disability or a restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment, retribution, and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.

Id. at 168-69, 83 S. Ct. 554 (citations omitted).

In Boutin v. LaFleur, 591 N.W.2d 711, 717 (Minn. 1999), the Supreme Court of Minnesota utilized this analysis to determine that the predatory offender registration statute is regulatory, rather than punitive, in nature. The Court notes that the predatory offender statute does not require an affirmative restraint, that historically similar registration statutes have not been regarded as punishment, that it does not promote the traditional aims of punishment because it does not involve confinement and is not intended to exact retribution, and that the primary purpose of the statute is to create an offender registry to assist in law enforcement

investigations. Id. The Court affirmed this holding in Kaiser v. State, 641 N.W.2d 900, 908, (Minn. 2002) stating that "the predatory offender law seeks to increase public safety by requiring a specific class of offenders to provide information to law enforcement authorities to assist in keeping track of them....[therefore] the duty to register as a predatory offender is a regulatory rather than punitive consequence..."

DISCUSSION

The primary purpose of Minn. Stat. § 243.166 is to create an offender registry to assist law enforcement in investigations of allegations of criminal activity. The statute does not prohibit future criminal conduct by former predatory offenders. Under Minnesota case law, the predatory offender registration statute has been classified as civil regulatory, rather than prohibitory, in nature. Thus, because Public Law 280 limits the State's general civil regulatory authority, the State lacks jurisdiction to impose criminal penalties on residents of Indian reservations for violations of predatory offender registration statutes. However, should a predatory offender residing on an Indian reservation move off the reservation to unprotected lands, the predatory offender registration laws would then apply, and the State would have jurisdiction to enforce any penalties for failure to comply with the statute.

NOTE: In deciding this case, the Court has followed the law, as established by the Minnesota Supreme Court. However, allowing predatory offenders to dodge registration requirements based on residency flies in the face of public

policy and safety. Predatory offender registration laws serve a purpose to law enforcement by monitoring prior offenders, and allowing offenders who reside on Indian reservations to evade these requirements presents potential danger and risk to society. The current laws must be examined via legislation or otherwise in order to prevent dangerous predatory offenders from sidestepping registration requirements designed to protect innocent members of society.

CONCLUSION OF LAW

Because Minn. Stat. § 243.166 is civil/regulatory in nature, the State lacks jurisdiction to impose criminal penalties on the Defendant for failure to comply with the requirements of the statute.

ORDER

Upon all filings, records, and evidence in these proceedings, and upon the arguments of counsel,

IT IS HEREBY ORDERED:

1. Defendant's motion to dismiss based on lack of subject matter jurisdiction is granted.
2. The above-entitled case is hereby dismissed without prejudice.

DATED: February 5, 2005 /s John P. Smith

JUDGE JOHN P. SMITH
Ninth Judicial District

Court of Appeals of Minnesota.
STATE of Minnesota, Appellant,
v.
Peter John JONES, Respondent.
No. A05-365.

July 26, 2005.

Background: Native American previously convicted of kidnapping, who had been charged under predatory-offender registration statute with felonies of failing to notify Bureau of Criminal Apprehension (BCA) of his change of address and failing to complete, sign and return to the BCA the requisite address verification forms, moved to dismiss charges on ground that state courts lacked subject matter jurisdiction to enforce citied provisions of statute against him. The District Court, Cass County, John P. Smith, J., granted motion. State appealed.

Holding: The Court of Appeals, Gordon W. Shumaker, J., held that state lacked subject-matter jurisdiction to enforce statute against Native American living on Indian reservation, as statute was " civil/regulatory" in nature.

**557 Syllabus by the Court*
Minnesota's predatory-offender registration statute, Minn.Stat. § 243.166 (2002), is civil/regulatory in nature and therefore the State of Minnesota does not have jurisdiction to apply the law to a Native American tribal member residing on an Indian reservation.

Earl Maus, Cass County Attorney, Christopher J. Strandlie, Assistant Cass County Attorney, Walker, MN, for appellant.
Blair W. Nelson, Bemidji, MN, for respondent.
Mike Hatch Attorney General, Angela M. Helseth, Sean R.

McCarthy, Assistant Attorneys General, St. Paul, MN, for Amici Curiae Mike Hatch, Minnesota Attorney General, and Minnesota Bureau of Criminal Apprehension.

***558** Considered and decided by WILLIS, Presiding Judge; KLAPHAKE, Judge; and SHUMAKER, Judge.

OPINION

GORDON W. SHUMAKER, Judge.

This is an appeal from a pretrial order dismissing the complaint charging respondent with failing to comply with the predatory-offender registration statute. The state argues that the district court erred in determining that Minn.Stat. § 243.166 (2002) is civil/regulatory and therefore unenforceable against a Native American tribal member residing on a reservation. We affirm.

FACTS

Respondent Peter Jones, an enrolled member of the Leech Lake Band of Ojibwe, was convicted of the felony of kidnapping. That conviction subjected him to the law requiring certain felons, denominated predatory offenders, to "register" with assigned corrections agents or specified law-enforcement agencies. Among the law's requirements is that the offender register his current residence address.

Jones registered his address, and later, when he moved, he registered his new address. Both addresses are on the Leech Lake Indian Reservation.

The Bureau of Criminal Apprehension (BCA) sent to Jones several requests that he verify his residence address. He failed to do so within the time allowed by statute. A deputy sheriff assigned to investigate Jones's whereabouts

discovered that Jones was not living at the address on file with the BCA but rather was living at a different residence on the reservation.

The state charged Jones with the felonies of failing to notify the BCA of his change of address and failing to complete, sign, and return to the BCA the requisite address-verification forms.

Jones moved to dismiss the charges on the ground that the Minnesota courts lack subject-matter jurisdiction to enforce the cited provisions of the registration law against a Native American residing on an Indian reservation. The district court ruled that the law in question is civil/regulatory in nature, and, as such, it does not confer jurisdiction on state courts to enforce it against an Indian residing on a reservation. The court dismissed the charges, and the state appealed.

ISSUE

A Native American living on an Indian reservation was convicted of the felony of kidnapping and thereby became classified as a predatory offender subject to the requirement that he register his current address with the authorities. He failed to do so. Did the district court err in ruling that the requisite requirement is civil/regulatory and as such does not confer jurisdiction on the state courts to enforce the registration-of-address requirement?

ANALYSIS

[1] Whether the state has jurisdiction to enforce its laws against a Native American living on an Indian reservation is an issue that this court reviews de novo. *State v. Busse*, 644 N.W.2d 79, 82 (Minn.2002).

[2] A state may enforce its laws against an enrolled tribal member on an Indian reservation only if Congress expressly so provides. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S.Ct. 1083, 1087, 94 L.Ed.2d 244 (1987). In Public Law 280, Congress granted broad criminal subject-matter jurisdiction over offenses by or against Indians. Pub.L. No. 83-280, 67 Stat. 588-89 (1953) codified as amended at *559 18 U.S.C. § 1162(a) (1994). In that same law, Congress granted only limited civil jurisdiction over Indian affairs. *Id.* The district court held that the state has jurisdiction to enforce a law against an Indian on a reservation only if the law can be classified as criminal/prohibitory and not as civil/regulatory. The court held that the registration statute at issue is civil/regulatory.

Emphasizing heightened public-policy concerns, the state argues that the registration statute is prohibitory, and, therefore, the state has jurisdiction to enforce it against Jones.

Minn.Stat. § 243.166, subds. 3(a), 4(e)(1) (2002), requires, among other things, that a predatory offender register with a corrections agent or specified law-enforcement agency and that the offender verify his or her residence address by completing and returning a " verification form." Jones registered with the BCA as required but failed to comply with the statute's address-verification requirement. That failure resulted in felony charges against Jones for violation of the registration mandates. If section 243.166 is a criminal/prohibitory statute, the state has jurisdiction to prosecute Jones for his noncompliance. *See Cabazon*, 480 U.S. at 209-10, 107 S.Ct. at 1088-89. But if the statute is civil/regulatory in nature, the state lacks jurisdiction to prosecute Jones. *See id.*

There is no bright-line test to distinguish civil from criminal laws. But the United States Supreme Court provided guidance in *Cabazon,* focusing on the lawfulness or unlawfulness of the conduct at issue and the state's public policy:

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.

480 U.S. at 209, 107 S.Ct. at 1088.

[3] In *State v. Stone,* the Minnesota Supreme Court made it clear that " [i]n order for a state law to be fully applicable to a reservation under the authority of Public Law 280, it must be a criminal law." 572 N.W.2d 725, 729 (Minn.1997) (citing *Cabazon,* 480 U.S. at 208, 107 S.Ct. at 1088). The supreme court then adopted a two-step approach for applying *Cabazon.* The first step is to determine the focus of the analysis, that is, whether the concern is the broad conduct or the specific, narrow conduct at issue. *Stone,* 572 N.W.2d at 730. " The broad conduct will be the focus of the test *unless* the narrow conduct presents substantially different or heightened public policy concerns." *Id.* The second step is then to apply the *Cabazon* test to that conduct. *Id.*

In *Stone,* the supreme court noted that a distinction between broad conduct and narrow conduct will be crucial if the former is generally permitted but the latter is generally prohibited. *Id.* at 731. We are unable to find any meaningful distinction here between broad and narrow conduct. The conduct at issue is Jones's failure to keep the authorities

apprised of his residence address. That conduct, then, is the focus of the *Cabazon* test.

To apply the *Cabazon* test, the court in *Stone* held that we must determine whether the conduct is generally permitted or generally prohibited: " If the conduct is generally permitted, subject to exceptions, then the law controlling the conduct is civil/regulatory. If the conduct is generally prohibited, the law is criminal/prohibitory." *Id.* at 730.

***560** [4] The conduct at issue is not the underlying criminal act that resulted in the conviction and the registration requirement. Rather, the conduct is the offender's failure to report his current residence address to state authorities. It is beyond dispute that people living in Minnesota have no general obligation to register their residence addresses with state authorities. But the registration requirement for predatory offenders is an exception to that proposition. Thus, under the *Stone* approach, the conduct is generally permissible but is subject to regulation. That makes the registration requirement civil/regulatory rather than criminal/prohibitory.

In *Cabazon*, the Supreme Court noted that " state laws governing an activity must be examined in detail before they can be categorized as regulatory or prohibitory." *Cabazon*, 480 U.S. at 211 n. 10, 107 S.Ct. at 1089. When we examine section 243.166, we are led inexorably to the conclusion that the essence of the law is regulatory, aiming at providing information to assist law enforcement in keeping track of felons classified as predatory. Its purpose is investigative. By contrast, a criminal law prohibits certain conduct, usually because the conduct is harmful in some way. Failing to reveal an address causes no harm, poses no threat, and jeopardizes no person or property. Registration will not prohibit or deter

a further crime if the predator chooses to commit one.

Both the state and the amici curiae emphasize heightened public-policy concerns in urging that the district court's conclusion that the statute is civil/regulatory was erroneous. The court in *Stone* noted that the public-policy test of *Cabazon* " is helpful," pointed out that the focus is on criminal public policy, and then described criminal public policy as seeking " to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." *Stone*, 572 N.W.2d at 730. Undeniably, predatory crimes are serious breaches in the social fabric that clearly threaten or cause grave harm to people. But the same cannot be said of the address-registration requirement. Although address registration might have value to law enforcement in investigating and apprehending people suspected of predatory crimes, a failure to register does not itself pose a threat of grave harm to anyone, and, therefore, does not offend the state's criminal public policy.

Among the Minnesota cases on which the district court relied in dismissing the charges against Jones were *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn.1999), and *Kaiser v. State*, 641 N.W.2d 900 (Minn.2002). The amici curiae contend that the court's reliance on those cases was misplaced because both are factually dissimilar to the instant case and neither involved an issue of state jurisdiction over Indians on reservations. But in each the supreme court characterized section 243.166 as civil/regulatory. Referring to *Boutin*, the court in *Kaiser* said: " [W]e held that the statute was civil and regulatory, and not penal, because it did not have the fundamental characteristics of punishment ..." as set out by the United State Supreme Court. *Kaiser*, 641 N.W.2d at 905. The court noted that, unlike criminal laws, the registration statute " does not require an affirmative restraint," is not the

type of law that has been historically regarded as criminal, and " does not promote the traditional aims of punishment because it does not involve confinement and is not intended to extract retribution...." *Id.* The court described the statute as " regulatory non-punitive" in nature that has the " clear purpose" of keeping " law enforcement informed as to a predatory offender's whereabouts." *Id.* at 907. Although it is correct that the supreme court in *Boutin* and *Kaiser* was not asked to address the jurisdictional issue raised here, it would seem ***561** wholly contradictory for any court to classify the statute as regulatory/civil for some purposes and prohibitory/criminal for other purposes.

Thus, again recognizing that the state has only that jurisdiction over tribal members on Indian reservations that Congress expressly grants, we find no such grant of jurisdiction to enforce the regulatory law codified as Minn.Stat. § 243.166 against Jones. The district court did not err in dismissing the charges against Jones.

DECISION

Because the purpose of Minn.Stat. § 243.166 (2002) is to aid law enforcement in investigations and because a violation of this law does not breach the state's public criminal policy, the statute is civil/regulatory, and the state lacks jurisdiction to enforce it against a Native American living on a reservation.

Affirmed.

Supreme Court of Minnesota.
STATE of Minnesota, Appellant,
v.
Peter John JONES, Respondent.
No. A05-365.

March 22, 2007.

Background: Enrolled Indian tribal member previously convicted of kidnapping, who had been charged under predatory-offender registration statute with felonies of failing to notify Bureau of Criminal Apprehension (BCA) of his change of address and failing to complete, sign and return to the BCA requisite address verification forms, moved to dismiss charges on ground that state courts lacked subject matter jurisdiction to enforce cited provisions of statute against him. The District Court, Cass County, John P. Smith, J., granted motion. State sought review. The Court of Appeals, 700 N.W.2d 556, affirmed. State appealed.

Holding: The Supreme Court, Paul H. Anderson, J., held that violation of predatory-offender registration statute was a criminal/prohibitory offense, and thus, state had subject matter jurisdiction to prosecute tribal member.

Reversed.

G. Barry Anderson, J., concurred and filed opinion in which Gildea, J., joined.

Page, J., dissented and filed opinion in which Russell A. Anderson, C.J., joined.

*2 *Syllabus by the Court*

The State of Minnesota has jurisdiction to enforce Minn.Stat. § 243.166 (2002) against an enrolled Indian tribal member residing on his reservation when the tribal member has been convicted of an enumerated predatory offense and fails to maintain his residence address registration, because the tribal member's violation of section 243.166 is a criminal/prohibitory offense.

Earl E. Maus, Cass County Attorney, Christopher J. Strandlie, First Assistant Cass County Attorney, Walker, MN, for Appellant.

Blair W. Nelson, Bemidji, MN, for Respondent.

Lori Swanson, Minnesota Attorney General, Angela M. Helseth, Assistant Attorney General, Sean R. McCarthy, Assistant Attorney General, St. Paul, MN, for Amici Curiae.

Heard, considered, and decided by the court en banc.

OPINION

ANDERSON, PAUL H., Justice.

In December 2004, the Cass County Attorney filed a complaint against **Peter John Jones** for failing to **register** his current address with the appropriate authorities. More particularly, the county attorney charged **Jones** with violating Minn.Stat. § 243.166 (2002),[FN1] which requires a person who is convicted of certain " predatory" offenses to **register** his current address with the appropriate authorities and to complete and return address-verification forms. **Jones**, who is an enrolled Indian tribal member and resides on his reservation, moved to dismiss the charges, arguing that section 243.166 is civil/regulatory in nature and therefore the State of Minnesota lacks subject matter jurisdiction to prosecute **Jones**. The state responded by asserting that

section 243.166 is criminal*3 /prohibitory in nature and therefore the state has subject matter jurisdiction to prosecute **Jones**. The Cass County District Court granted **Jones's** motion to dismiss and the Minnesota Court of Appeals affirmed. *State v. **Jones***, 700 N.W.2d 556, 558 (Minn.App.2005). Because we conclude that a tribal member's violation of section 243.166 is a criminal/prohibitory offense and therefore the state has subject matter jurisdiction, we reverse.

> FN1. Section 243.166 has been amended several times since the conduct at issue in this case began. Accordingly, we cite the 2002 version of Minnesota Statutes for section 243.166.

Respondent **Peter John Jones** is an enrolled member of the Leech Lake Band of Ojibwe and resides on the Leech Lake Indian Reservation. In 1996, he committed an offense for which he was subsequently convicted of and sentenced for kidnapping under Minn.Stat. § 609.25 (2006). A person convicted of kidnapping is required to **register** his current address with the proper authorities. Minn.Stat. § 243.166, subd. 1(a)(1)(ii) (2002).

In July 2001, as required by Minn.Stat. § 243.166, **Jones registered** his Leech Lake Reservation address. On July 1, 2002, and June 30, 2003, the Minnesota Bureau of Criminal Apprehension (BCA) sent **Jones** address-verification requests, but **Jones** failed to reply as required by Minn.Stat. § 243.166, subd. 4(e)(2) (2002). Subsequently, on July 21, 2003, **Jones** completed a change of address form, notifying the BCA that he had moved to a new address on the Leech Lake Reservation. On July 24, 2003, the BCA sent **Jones** an address-verification request, and **Jones** again failed to reply. On March 11, 2004, a Cass County deputy sheriff, who was

performing routine checks on **registered** offenders, checked the address provided by **Jones** on his change of address form. **Jones's** mother was at the address **Jones** had provided to the BCA. She informed the deputy that her son was no longer living at that address and provided the deputy with her son's current address, which was also on the Leech Lake Reservation. On March 30, 2004, the BCA sent an address-verification request to the address provided by Jones's mother, and Jones again failed to reply. Finally, on June 28, 2004, the BCA sent an address-verification request to the last address Jones reported to the BCA, but Jones did not reply.

In December 2004, the state charged Jones with one count of failing to notify the BCA of his change of address and five counts of failing to return the required address-verification forms in violation of Minn.Stat. § 243.166, subds. 3(b), 4(e), 5 (2002). Jones moved to dismiss the charges, arguing that the State of Minnesota lacked subject matter jurisdiction to prosecute him. A hearing was held on the motion and the district court granted Jones's motion to dismiss. The court concluded that Minn.Stat. § 243.166 is civil/regulatory in nature, and therefore the state lacked subject matter jurisdiction to prosecute Jones. The state appealed, and the court of appeals affirmed the district court. *Jones*, 700 N.W.2d at 558. The state then sought review by our court, arguing that both the district court and the court of appeals erred in concluding that the state lacked jurisdiction.

Jones is charged with violating section 243.166, which requires registration by persons who have been convicted or adjudicated delinquent of first-degree murder involving criminal sexual conduct; kidnapping; criminal sexual conduct; indecent exposure; a variety of solicitation and pornography offenses involving minors, or another offense arising out of the same circumstances; and persons convicted

of a so-called predatory crime and sentenced as a patterned sex offender under *4Minn.Stat. § 609.108 (2002).[FN2] Minn.Stat. § 243.166, subd. 1(a) (2002). Additionally, Minn.Stat. § 243.167 (2002) [FN3] requires persons to register under section 243.166 who (1) have been convicted of a specified " crime against the person" and have previously been convicted or adjudicated of an offense listed in section 243.166, subd. 1(a), but were not required to register at the time; or (2) have previously completed the registration requirements of section 243.166 and commit a crime against the person. A Minnesota resident who is subject to these sections is required to register with his assigned corrections agent or, if none, with the law enforcement authority in the area of his residence. Minn.Stat. § 243.166, subd. 3(a) (2002).

> FN2. Minnesota Statutes § 609.108 was repealed in 2005 and 2006. Act of June 2, 2005, ch. 136, art. 2, § 23, 2005 Minn. Laws 901, 933 (repealing section 609.108, subd. 2); Act of June 1, 2006, ch. 260, art. 1, § 48, 2006 Minn. Laws 707, 732 (repealing section 609.108, subds. 1, 3-7).

> FN3. Section 243.167 was amended in 2005, after the conduct at issue in this case was committed. Act of June 2, 2005, ch. 136, art. 3, § 9, 2005 Minn. Laws 901, 951. Accordingly, we cite the 2002 version of the Minnesota Statutes for section 243.167.

At least five days before starting to live at a new primary residence, a person subject to section 243.166 is required to give written notice of his new address to the corrections agent or law enforcement authority with which he is registered. *Id.*, subd. 3(b). Changes in primary address are forwarded to the BCA. *Id.* The BCA is required to mail an address-verification

form to the person's last reported address, and the person is required to return the signed form by mail within ten days after receiving it. *Id.*, subd. 4(e). A person required to register under this section who knowingly violates any of its provisions or intentionally provides false information is guilty of a felony with a maximum sentence of five years in prison, a fine up to $10,000, or both. *Id.*, subd. 5(a) (2002). The minimum sentence is one year and one day for the first offense and two years for a subsequent offense. *Id.*, subd. 5(b)-(c) (2002). Whether the State of Minnesota has jurisdiction to enforce section 243.166 with respect to Jones, who is an enrolled member of an Indian tribe charged with an offense committed on his reservation,[FN4] is an issue that we review de novo. *See State v. Busse*, 644 N.W.2d 79, 82 (Minn.2002).

> FN4. Because Jones resides on his reservation, his failure to maintain a current address registration was necessarily an offense that was committed on his reservation.

[1] We begin our analysis with the premise that the state's authority to exercise subject matter jurisdiction over Indians is governed by federal law. *See* Act of Aug. 15, 1953, Pub.L. No. 280, 67 Stat. 588 (partially codified at 18 U.S.C. § 1162 (2000)); *accord State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn.2000). Under Public Law 280, Minnesota has broad criminal and limited civil jurisdiction over all " Indian country" within the state, except for the Red Lake Reservation and the Bois Forte Reservation at Nett Lake. *See State v. Stone*, 572 N.W.2d 725, 728 & 728 n. 3 (Minn.1997). In *R.M.H.*, we explained the analytical framework for determining whether the state has subject matter jurisdiction in a particular case:

[S]tate law does not generally apply to tribal Indians on their

reservation absent express consent from Congress. However, even absent such express consent, a state may exercise its authority if the operation of federal law does not preempt it from doing so.

*5 * * * [T]he same analytical framework that we applied in *Stone* is appropriate here. * * * In order to determine whether Congress had expressly consented to state jurisdiction, we first examined Pub.L. 280, which expressly grants Minnesota broad * * * criminal and limited civil jurisdiction over specified areas of Indian country.

* * * *

* * * This grant of jurisdiction was intended to combat the problem of lawlessness on reservations and a lack of tribal law enforcement. * * * Pub.L. 280 grants states " broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State." * * * [A] state statute is " criminal/prohibitory," and therefore within Pub.L. 280's grant of jurisdiction, if the statute is generally intended to prohibit certain conduct. * * * [A] statute does not fall within Pub.L. 280's grant of jurisdiction if it generally permits the conduct at issue, subject to regulation. In the latter case, the statute is properly classified as " civil/regulatory" and Pub.L. 280 does not expressly grant the state jurisdiction to enforce the statute on an Indian reservation.

617 N.W.2d at 58-59 (citations omitted).

Applying this analytical framework, we must ascertain whether Minn.Stat. § 243.166 is *civil/regulatory* or *criminal/prohibitory* in order to determine whether Congress has expressly consented to Minnesota's jurisdiction to enforce this statute against an enrolled tribal member residing on his reservation. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207-08, 107 S.Ct. 1083, 94 L.Ed.2d

244 (1987); *Busse*, 644 N.W.2d at 83. The United States Supreme Court noted in *Cabazon* that the distinction between civil/regulatory and criminal/prohibitory is not a bright-line rule, and that " [t]he applicable state laws governing an activity must be examined in detail before they can be characterized as regulatory or prohibitory." 480 U.S. at 210, 211 n. 10, 107 S.Ct. 1083.

[2] In *Stone*, we adopted a two-step test to determine whether a law is civil/regulatory or criminal/prohibitory under *Cabazon*. 572 N.W.2d at 730. The first step is to determine the focus of our analysis-whether to analyze the broad conduct or the narrow conduct at issue. *Id.* We will focus on the broad conduct " *unless* the narrow conduct presents substantially different or heightened public policy concerns." *Id.* When the narrow conduct presents substantially different or heightened public policy concerns, we will focus on the narrow conduct. *Id.*

[3][4] After we determine the proper focus, the second step in the *Cabazon/Stone* test is to determine if the conduct at issue is generally permitted but subject to regulation, or if it is generally prohibited. *Id.* Conduct generally permitted, subject to exceptions, is civil/regulatory, and conduct generally prohibited is criminal/prohibitory. *Id.* In close cases, we may utilize *Cabazon*'s " shorthand public policy test." *Id.* In *Stone*, we concluded that under the " shorthand public policy test," conduct is criminal/prohibitory if it violates the state's public *criminal* policy. *Id.* We explained that " [p]ublic criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." *Id.* In *Stone*, we identified four nonexclusive factors that are useful in determining whether an activity

violates public criminal policy in a manner serious enough to be considered " criminal" : (1) the extent to which the activity directly threatens physical harm to others or property,*6 or invades the rights of others; (2) the extent to which the law allows for exceptions and exemptions; (3) the blameworthiness of the actor; and (4) the nature and severity of the potential penalties for a violation of the law. *Id.* (footnote omitted).

[5] To determine whether the state has subject matter jurisdiction to prosecute Jones for violating Minn.Stat. § 243.166, we must first identify the broad and narrow conduct covered by the statute and decide which conduct should be the subject of our focus under the *Cabazon/Stone* test. In its decision, the court of appeals stated, " We are unable to find any meaningful distinction here between broad and narrow conduct" and " [t]he conduct at issue is Jones's failure to keep the authorities apprised of his residence address." *Jones*, 700 N.W.2d at 559. The court then stated that " people living in Minnesota have no general obligation to register their residence addresses with state authorities," and " the registration requirement for predatory offenders is an exception to that proposition." *Id.* at 560.

We disagree with the court of appeals' characterization of the broad conduct at issue as registration by Minnesota residents in general. We conclude that the broad conduct at issue is residing at an address or moving to a new address by Minnesota residents in general. The narrow conduct we must analyze is an identified predatory offender residing or moving without maintaining a current address registration with the proper authorities. Our characterization of the broad and narrow conduct at issue based on what is required or prohibited of certain populations is consistent with our approach in *Busse*. In *Busse*, we concluded that the broad

conduct was driving by people in general, and the narrow conduct was driving by a person whose driver's license had been cancelled as inimical to public safety. 644 N.W.2d at 83.[FN5]

> FN5. The dissent apparently contends that our identification of the broad and narrow conduct at issue in this case departs from *Busse* because
> [t]he statute at issue in *Busse* dealt with [the broad conduct of driving and] the narrow conduct of driving after cancellation * * * by *anyone* whose driver's license had been cancelled. In contrast, Minn.Stat. § 243.166 does not purport to bar registered offenders from living in certain areas or communities, and does not prohibit them from moving * * *.
> But the " contrast" the dissent attempts to draw rests on a distinction without a difference. The broad conduct we identified in *Busse*-driving-is generally permissible except by a person whose license has been revoked under the relevant statute. Similarly, the broad conduct we identify in this case-residing at or moving to any address-is generally permissible except by predatory offenders who fail to maintain a current address registration as required by the relevant statute. That only " predatory offenders" -and not " anyone" - may engage in the narrow conduct at issue in this case does not provide a basis for the dissent's apparent conclusion that we are departing from *Busse*, rather than applying it.

Having identified the broad and narrow conduct at issue, we must next determine which conduct should be the subject of our focus under the *Cabazon/Stone* test. *Stone*, 572 N.W.2d at 730. As noted above, when the narrow conduct presents substantially different or heightened public policy concerns,

we will focus on the narrow conduct in applying the *Cabazon/ Stone* test. *Id.* As the court of appeals correctly noted, Minnesota residents have no general obligation to register their residence address with state authorities. Registration is required only for those persons who have been convicted of certain felonies, including first-degree murder involving criminal sexual conduct, kidnapping, criminal sexual conduct, indecent exposure,*7 and a variety of solicitation and pornography offenses involving minors. We conclude that the fact that the legislature established a predatory offender registration system is an indication that the whereabouts of predatory offenders-in comparison with the whereabouts of the general population-" presents [a] substantially different or heightened public policy concern [ ]." *Stone*, 572 N.W.2d at 730.

Our review of the legislative history of section 243.166 indicates that the public policy concerns associated with persons convicted of specified predatory crimes have grown over time. Section 243.166 was enacted in 1991 in response to a highly publicized kidnapping. Act of June 1, 1991, ch. 285, § 3, 1991 Minn. Laws 1324, 1325; *Governor's Task Force on Missing Children Final Report* 3, 7 (1991). In 1993, the legislature amended the statute to expand the scope of its application. Act of May 20, 1993, ch. 326, art. 10, § 1, 1993 Minn. Laws 1974, 2090. In 2000, after another highly publicized kidnapping, the legislature significantly revised section 243.166 and related statutes. Act of Apr. 3, 2000, ch. 311, art. 2, 2000 Minn. Laws 185, 189-207; *Protection from Predators*, Session Weekly (Minn. House of Reps. Pub. Info. Office), Mar. 31, 2000, at 14. The legislature increased the offense grade for a violation of section 243.166 from a gross misdemeanor to a felony and imposed a mandatory prison sentence for its violation. Art. 2, § 6, 2000 Minn. Laws at 194.

The 2000 revisions also brought Minnesota into compliance with requirements under the federal Jacob Wetterling Act. *See* Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub.L. No. 103-322, 108 Stat. 2038 (1994) (codified at 42 U.S.C. § 14071 (2000)). Among other things, the revisions required registration by additional offenders, lengthened the registration period for certain offenders, required the collection of additional information from certain offenders, required the BCA to maintain a computerized database of information on sex offenders, provided a procedure for treatment facilities to release information about offenders, expanded and clarified the community notification law, and authorized the posting of information about level III offenders on the Internet and the disclosure of certain information about noncompliant offenders. Act of Apr. 3, 2000, ch. 311, art. 2, 2000 Minn. Laws 185, 189-207. In 2003, the legislature defined " primary residence" and " secondary residence," clarified that an offender must immediately notify the proper authorities when the offender's primary address no longer applies, and clarified that new address and vehicle information must be provided even if the offender had not previously reported the information. Act of May 27, 2003, ch. 116, § 2, 2003 Minn. Laws 685, 686. To further illustrate the point that section 243.166 has undergone extensive expansion, we note that, in recent years, section 243.166 has significantly increased in length, going from approximately two pages of the statute books in 1998 to nine pages in 2006. *Compare* Minn.Stat. § 243.166 (1998) *with* Minn.Stat. § 243.166 (2006).

We conclude that the legislative history of section 243.166 indicates that a predatory offender residing or moving without maintaining a current address registration with the

proper authorities presents a substantially different or heightened public policy concern when compared with Minnesota residents in general. We also conclude, based especially on the significant revisions to section 243.166 in 2000, that this public policy concern has increased during the last several years. We therefore conclude that our focus under the *Cabazon/Stone* test should be on the narrow conduct of a predatory offender ***8** residing or moving without maintaining a current address registration with the appropriate authorities.

Having concluded that the narrow conduct of a predatory offender should be our focus under the *Cabazon/Stone* test, our second step under the test is to determine if a predatory offender residing or moving without maintaining a current address registration is generally permitted, subject to exceptions, or if it is generally prohibited. *Stone*, 572 N.W.2d at 730. With our focus properly placed on the narrow conduct in this case, we conclude that the conduct is unequivocally prohibited by section 243.166. A person who is required to register under section 243.166 cannot legally avoid this requirement. The statute allows no exceptions. As we observed in *Stone*, conduct that is generally prohibited is criminal/prohibitory. 572 N.W.2d at 730. We therefore conclude that section 243.166 is properly categorized as criminal/prohibitory under the *Cabazon/Stone* test.

While we do not consider this to be a close case, we note that the same result would be mandated under the *Cabazon/Stone* " shorthand public policy test." *Stone*, 572 N.W.2d at 730. As noted above, when applying the " shorthand test," we consider four nonexclusive factors in determining " whether an activity violates the state's public policy in a nature serious enough to be considered ' criminal.' " *Id.* First, we consider the extent to which the activity directly threatens physical

harm to others or property, or invades the rights of others. In *Busse*, we concluded that it is appropriate to consider the nature of the charged offense in determining the extent to which an activity directly threatens physical harm. 644 N.W.2d at 85. In that case, Busse asserted that driving after his driver's license had been cancelled as inimical to public safety could not pose heightened public policy concerns because he was not intoxicated at the time of the driving at issue. *Id.* We concluded that *any* driving by a person whose driver's license had been cancelled as inimical to public safety because of at least three driving-under-the-influence convictions poses a risk to public safety. *Id.* at 85-86.

The same reasoning guides our analysis of the threat of physical harm to others posed by a predatory offender's failure to maintain a current address registration. The rationale behind the registration requirement is that persons convicted of first-degree murder involving criminal sexual conduct, kidnapping, criminal sexual conduct, and other enumerated predatory crimes pose a greater risk to public safety than the general population. It is difficult to dispute that predatory offenders pose a threat to public safety. While registration information is generally classified as private data on individuals, it may be made public if an offender 16 years or older is out of compliance with registration requirements for 30 days or longer. Minn.Stat. § 243.166, subds. 7, 7a(a) (2002). The purpose of publicizing registration information of noncompliant offenders is " for the public to assist law enforcement in locating the offender." *Id.*, subd. 7a(a). We conclude that the need for the public to aid law enforcement in locating predatory offenders who fail to maintain a current address registration emphasizes the threat of direct physical harm that noncompliant offenders pose. We therefore conclude that the first factor of the *Cabazon/Stone* shorthand test supports our conclusion that section 243.166 is

criminal/prohibitory.

Applying the second factor of the shorthand test-the extent to which the law allows for exceptions and exemptions-we note that section 243.166, subd. 5, categorically prohibits predatory offenders from *9 failing to **register** and there is no exception in the law.

As to the third factor-the blameworthiness of the actor-**Jones** does not argue that he was unaware of the registration requirements of section 243.166. Moreover, such an argument would be unconvincing given **Jones's** partial compliance with the statute. **Jones registered** as required in 2001 and submitted a change of address form to the BCA in 2003. But over the course of two years, **Jones** failed to return five address-verification forms that were sent to at least two different addresses provided by **Jones** himself and by his mother. We conclude that **Jones** was aware of the requirements of section 243.166 and knowingly refused to comply with those requirements. We therefore conclude that **Jones** has demonstrated a high level of blameworthiness in failing to maintain a current address registration.

Finally, applying the fourth factor of the *Cabazon/Stone* shorthand test, we consider the nature and severity of the potential penalties for a violation of section 243.166. As noted above, a person required to register under section 243.166 who knowingly violates any of its provisions or intentionally provides false information is guilty of a felony with a maximum sentence of five years in prison, a fine up to $10,000, or both. Minn.Stat. § 243.166, subd. 5(a). The minimum sentence is one year and one day for a first offense and two years for a subsequent offense. *Id.*, 5(b)-(c). The existence of a criminal penalty alone does not dictate that a law is criminal prohibitory, and we do not rely exclusively on

the criminal penalty here. *See* *Cabazon*, 480 U.S. at 211, 107 S.Ct. 1083. But the legislature's determination that a violation of section 243.166 is a felony is one factor supporting a conclusion that section 243.166 " seeks to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." *Stone*, 572 N.W.2d at 730.

Having applied each of the four factors in the *Cabazon/Stone* " shorthand public policy test" -namely, determining the extent to which a predatory offender's failure to maintain a current address registration directly threatens physical harm to others; the extent to which section 243.166 allows for exceptions and exemptions; Jones's blameworthiness; and the nature and severity of the potential penalties for a violation of section 243.166-we believe that our conclusion that section 243.166 is criminal/prohibitory in nature is well-supported by our decision in *Stone*.

Our application of the *Cabazon/Stone* test has led us to conclude that it is not a close call whether section 243.166 is criminal/prohibitory; but our *Cabazon/Stone* analysis does not end our inquiry. Specifically, we must address Jones's argument that our holdings in *Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn.1999), and *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn.2002), mandate a conclusion that section 243.166 is civil/regulatory in nature. We disagree with this argument because section 243.166 has been significantly revised since these cases were decided and because neither case addressed the classification of section 243.166 under the *Cabazon/ Stone* test.[19] In *Boutin* and *Kaiser* we were not asked-nor did we determine-whether section 243.166 is criminal/prohibitory versus civil/regulatory under *Cabazon*. Because this question was not before us, we did not conduct the two-step *Cabazon Stone* test to reach our decisions.

FN6. Although *Kaiser* was decided in 2002, our opinion interpreted the 1998 version of section 243.166. 641 N.W.2d at 902.

***10** In addressing the heightened public policy concerns under the *Cabazon/Stone* test, we have already noted the significant revisions to section 243.166 and related statutes by the 2000 legislature; but those revisions are worth repeating here. The 2000 revisions increased the offense grade for a violation of section 243.166 from a gross misdemeanor to a felony, brought Minnesota into compliance with requirements under the federal Jacob Wetterling Act, required registration by a larger group of offenders, lengthened the registration period for certain offenders, required the collection of additional information from certain offenders, required the BCA to maintain a computerized database of information on sex offenders, provided a procedure for treatment facilities to release information about offenders, expanded and clarified the community notification law, and authorized the posting of information about level III offenders on the Internet and disclosure of certain information about noncompliant offenders. Act of Apr. 3, 2000, ch. 311, art. 2, 2000 Minn. Laws 185, 189-207.

Significantly, both *Boutin* and *Kaiser* addressed the 1998 version of section 243.166, which did not reflect the foregoing revisions. Moreover, in *Boutin* and *Kaiser*, we addressed an entirely different issue-whether the duty to register under section 243.166 is a punishment for a conviction of a predatory offense-not whether the failure to maintain a current address registration is generally prohibited conduct. More particularly, in *Boutin* and *Kaiser* we were asked to determine whether the duty to register as a predatory offender as a consequence of a conviction for a specified

offense is, in essence, a punishment from which we could conclude that section 243.166 is criminal, punitive rather than civil, regulatory in nature.

Boutin was a declaratory judgment action challenging the section 243.166 requirement to register following conviction for " another offense arising out of the same set of circumstances" as a criminal sexual conduct charge. 591 N.W.2d at 713-14. Boutin argued that the statute *violated substantive due process* by infringing on his presumption of innocence because it presumed him guilty of an enumerated predatory offense of which he was not actually convicted. *Id.* at 716. Rejecting that claim, we held that the fundamental presumption-of-innocence right only applies to statutes that " are punitive, or criminal, in nature." *Id.* at 717. We then applied the factors the Supreme Court enumerated in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), and held that section 243.166 is not a punitive statute *for due process purposes* because (1) registration does not require an affirmative disability or restraint; (2) historically, registration statutes have not been regarded as punishment; (3) " the registration statute does not promote the traditional aims of punishment since it does not involve confinement and is not intended to exact retribution" ; and (4) " the primary purpose of the statute is to create an offender registry to assist law enforcement with investigations." *Boutin*, 591 N.W.2d at 717. Because we concluded that section 243.166 was not *punitive*, we concluded that the statute was " civil, regulatory" under the *Kennedy* analysis. *Id.*

In *Kaiser*, we similarly concluded that the statutory duty to register as a predatory offender that arises because of a conviction for a specified offense is not a " punitive" consequence of the conviction for the underlying offense.

641 N.W.2d at 907. Rather, the duty to register is a collateral consequence of a defendant's guilty plea for the underlying offense. *Id.* We reviewed our holding in *Boutin,* indicating that in *Boutin* we had applied the *Kennedy*11* analysis and noted that the predatory offender statute does not require an affirmative restraint; that, historically, similar registration statutes have not been regarded as punishment; that the statute does not promote the traditional aims of punishment because it does not involve confinement and is not intended to exact retribution; and that the primary purpose of the statute is to create an offender registry to assist in law enforcement investigations. *Kaiser,* 641 N.W.2d at 905. We elaborated on the primary purpose of the statute by noting that section 243.166

is an expression of a policy statement-" society has the right to know of predatory offenders' presence not in order to punish them, but in order to protect itself." As statutes criminalizing the possession of firearms by convicted felons, or revoking driving privileges after a conviction for driving under the influence, require offenders to obey special regulations, the predatory offender law seeks to increase public safety by requiring a specific class of offenders to provide information to law enforcement authorities to assist in keeping track of them.

Id. at 905-06 (citation and footnotes omitted).

We acknowledge that our use in *Boutin* and *Kaiser* of the terms " punitive" -which we used interchangeably with " criminal" -and " civil, regulatory" could cause confusion in our analysis under the *Cabazon/Stone* test, which distinguishes conduct that is " criminal prohibitory" from that which is " civil regulatory." But " punitive" is not the same as " prohibitory," and the definition of " regulatory" under the *Kennedy* analysis of *Boutin* and *Kaiser* does not

have the same meaning as " regulatory" employed by Pub.L. 280 and *Cabazon*.FN7 Further, neither *Boutin* nor *Kaiser* required us to conduct an analysis under the highly refined *Cabazon/Stone* test, which we have applied here in a context that does not present a close call. FN8 Therefore, for all the foregoing reasons, we conclude that *Boutin* and *Kaiser* are distinguishable and do not require us to conclude that section 243.166 is civil/regulatory in nature under the *Cabazon/Stone* test.

> FN7. We further note that in *Kennedy,* the Supreme Court did not use the terms " civil" or " criminal" ; rather, the Court's analysis focused on whether the statute was " regulatory" or " penal." *See Kennedy,* 372 U.S. at 168, 83 S.Ct. 554.
>
> FN8. At this point it is important to reiterate that *Cabazon* used Pub.L. 280 as its template and focused on the " prohibitory/regulatory" distinction made in this federal statute. The Supreme Court then went on to conclude that the " prohibitory/regulatory" distinction was not a bright-line rule, and the Court therefore established a test to make this distinction in close cases. Neither *Boutin* nor *Kaiser* focused on Pub.L. 280 or the " prohibitory/regulatory" distinction that Congress articulated. *Cabazon,* 480 U.S. at 207-11, 107 S.Ct. 1083.

At this point, it is necessary to note that the dissent apparently seeks to characterize our analysis as one that elevates form over substance. But in doing so, the dissent fails to fully appreciate the distinction between " criminal/prohibitory" and " punitive." Specifically, the dissent fails to acknowledge that " criminal/prohibitory" for the purposes of the *Cabazon/ Stone* test is substantively

different from " punitive" for the purposes of the issues raised by *Boutin* and *Kaiser*-respectively, the constitutional guarantee of due process and the right to withdraw a guilty plea.[FN9] This ***12** failure leads the dissent to incorrectly construe the issue before us and, even worse, to apparently conclude that our decision will lead to discrimination against Native Americans in the due process context. Such discrimination is surely not our intention, and will not be the result from our decision.

> FN9. Moreover, the dissent fails to fully acknowledge that we do not have a choice as to whether we apply the *Cabazon/Stone* test in this case. Because the *Cabazon/Stone* test is federally mandated, we cannot alter or add nuances to it, as much as the dissent might like us to do so.

[6] Based on our conclusion that Minn.Stat. § 243.166 is criminal/prohibitory, we hold that the district court and court of appeals erred when they concluded that Minnesota courts do not have jurisdiction to enforce the statute against a tribal member who fails to register while residing on his Indian reservation. Therefore, we further hold that Minnesota courts have subject matter jurisdiction to enforce the charge of residing or moving without maintaining a current address registration against Jones, even though he is an enrolled member of the Leech Lake Band of Ojibwe who resides-and therefore violated section 243.166-on the Leech Lake Reservation.

Reversed.

ANDERSON, G. Barry, Justice (Concurring).

I concur in the result reached by the majority. I write separately because I reach that result in a different way. I find the majority's reliance on Public Law 280 and the distinction

between a " criminal/prohibitory" law and a " punitive" law tenuous and unnecessary in this case.

The United States Supreme Court has not established a *per se* rule precluding state jurisdiction over tribes and tribal members absent express Congressional consent. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 214-15, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987). " [A] state may assert jurisdiction over the on-reservation activities of tribal members," without authorization from Pub.L. 280 or otherwise, under " exceptional circumstances." *Cabazon*, 480 U.S. at 215, 107 S.Ct. 1083 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-32, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983)). In *State v. Stone*, for example, we decided that Pub.L. 280 did not authorize the state to enforce traffic regulations against tribal members traveling a highway on their reservation, and then turned to consider whether the case presented exceptional circumstances allowing regulation without statutory authorization. 572 N.W.2d 725, 731-32 (Minn.1997).

When Pub.L. 280 does not expressly authorize state jurisdiction, we ask whether federal law preempts state jurisdiction. *State v. R.M.H.*, 617 N.W.2d 55, 60 (Minn.2000); *see also Stone*, 572 N.W.2d at 731. In a preemption analysis, traditional notions of Indian sovereignty serve as a " backdrop against which the applicable treaties and federal statutes must be read." *Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123-24, 113 S.Ct. 1985, 124 L.Ed.2d 30 (1993) (quotation omitted). Far from preempting state authority to require convicted kidnappers to report their addresses to the state, Congress requires states to do so under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. *See* 42 U.S.C. § 14071 (2000). So we must consider whether the circumstances here

are " exceptional," as required by *Mescalero* and *Cabazon*, such that the state can regulate the on-reservation conduct of tribal members.

The Supreme Court has offered no guidance as to which circumstances are " exceptional." Lacking such guidance, we look to the cases in which the Court has allowed on-reservation regulation absent express Congressional authorization. A state can tax on-reservation sales of cigarettes to ***13** non-members. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 155, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980); *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463, 483, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976). *Colville* examined the competing interests of the state and the tribe, holding that the state could collect taxes from cigarettes sold on-reservation even though the tax would put the tribe at a competitive disadvantage to surrounding retailers and would impose an administrative burden on tribal smokeshops. 447 U.S. at 156-59, 100 S.Ct. 2069. A state can also tax the on-reservation sale of liquor to non-members. *Rice v. Rehner*, 463 U.S. 713, 720, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983). In *Rice*, the Court noted that Indian tribes lacked " a tradition of self-government in the area of liquor regulation" and that Congress did not intend to preempt states from regulating the sale of liquor. *Id.* at 731, 103 S.Ct. 3291. A state can also regulate fishing by tribal members on a river when the treaty granting the right to fish states that the right is to be exercised " in common with all citizens of the Territory" and when the tribe has alienated the river in fee simple absolute. *Puyallup Tribe, Inc. v. Dept. of Game*, 433 U.S. 165, 174-75, 97 S.Ct. 2616, 53 L.Ed.2d 667 (1977).

Following the example of *Colville*, *Moe*, *Rice*, and Puyallup, we must weigh the federal, state, and tribal interests at stake

in the particular case before us to determine whether the state can regulate. Whatever principles might be gleaned from these cases, the state's need to know the whereabouts of convicted kidnappers on Indian reservations qualifies as " exceptional" in comparison. The federal government's interest here is low, and the state's power to regulate high, because Congress requires states to conduct registration of predatory offenders. The state's interest in keeping track of convicted kidnappers is at least as high as its interest in collecting cigarette and liquor taxes from on-reservation sales or in regulating fishing on tribal waters. And the reporting requirement places no burden whatsoever on the tribe-the convict alone bears the minimal burden of filling out occasional address verifications. Because nothing is required of the tribe, the threat to its sovereignty is minimal.

The Supreme Court's most recent statement on the subject supports this conclusion. In *Nevada v. Hicks*, 533 U.S. 353, 361-62, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001), the Court explained:

Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as " sovereign" entities, it was " long ago" that " the Court departed from Chief Justice Marshall's view that ' the laws of [a state] can have no force' " within reservation boundaries. " Ordinarily," it is now clear, " an Indian reservation is considered part of the territory of the State."

(Citations omitted.) Therefore, " [w]hen * * * state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land." *Id.* at 362, 121 S.Ct. 2304 (citing *Colville*, 447 U.S. at 151, 100

S.Ct. 2069).

I do not read *Stone,* a case in which we found no exceptional circumstances, to undermine this position. In *Stone,* we held that the state's interest in enforcing traffic laws against tribal members on-reservation could not overcome " ' the right of reservation Indians to make their own laws and be ruled by them.' " ***14**572 N.W.2d at 732, (quoting *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 142, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980)). We noted our confidence in the ability of Indian tribes to enforce reasonable traffic and driving regulations. *Stone,* 572 N.W.2d at 732. We also observed that cases presenting " exceptional circumstances" have primarily involved an indirect government purpose to regulate non-Indians, and that the one case in which the Supreme Court permitted state regulation of Indians on a reservation without either a federal grant or a primary purpose of regulating non-members was *Puyallup. Id.* at 731-32.

Unlike the situation we considered in *Stone,* an Indian tribe has no obligation or incentive to create or enforce reporting requirements related to *state* criminal convictions. Indeed, expecting tribes to do so would constitute a greater infringement on their sovereignty than leaving the matter to the state. And requiring a convicted tribal member to fill out periodic address-verification forms is less intrusive and burdensome than requiring tribal cigarette and liquor vendors to collect and remit state taxes from sales to non-members or requiring tribal anglers to submit to state fishing regulations. It is true, as we noted in *Stone,* that to date the Supreme Court has just once allowed regulation of on-reservation conduct by tribal members without an indirect purpose of regulating non-members. But the state's indirect purpose here is to protect potential kidnapping victims, and that purpose is

at least as important as a state's indirect purpose to regulate cigarette or liquor purchasers by collecting sales taxes.

The dissent correctly points out that *Puyallup* is the only case in which the Supreme Court has found " exceptional circumstances" permitting a state to regulate the on-reservation activities of tribal members.[FN1] This in itself means nothing, except that *Puyallup* is the only decision the Court has made on the issue. The only case in which the Court has looked for and not found exceptional circumstances when a state sought to regulate tribal members on their reservation was *Cabazon*, in which the state's regulatory efforts were clearly preempted because the activity to be regulated (tribal bingo enterprises) was directly approved of and promoted by federal law. 480 U.S. at 218-19, 107 S.Ct. 1083. Here, we have the opposite situation-the federal government has ordered the states to regulate. The dissent also correctly points out that there is a difference between regulating tribal members and nonmembers. But the dissent cannot explain, because the Supreme Court has not explained, what that difference is.

> FN1. While this is technically true, it is a semantic distinction with less significance than the dissent suggests. The Court's decisions in Colville, *Moe*, and *Rice*, while nominally allowing regulation of liquor and cigarette purchases by non-tribal members, actually allowed the state to directly regulate tribal smokeshops and liquor stores by forcing them to collect sales taxes and report those taxes to the state. In those cases, the burden of state regulation fell equally if not more heavily on tribal members.

The dissent, apparently, would interpret the Court's scant, unenlightening jurisprudence in this area as a near or total bar

to state regulation. But the absence of meaningful guidance from the Court does not suggest that state regulation is never permitted. On the contrary, *Cabazon* makes clear that states can sometimes regulate tribal members on their reservation, and *Hicks* makes clear that the Court is increasingly willing to allow state regulation on-reservation where important state interests are implicated. As the law stands, it falls to us to determine with a fact-based inquiry when the state can regulate. Performing this inquiry, it seems ***15** clear that if the state can ever reach the on-reservation conduct of tribal members (and it can), it can do so here.

I would hold that the state's interest in tracking convicted kidnappers is so high, and the threat to tribal sovereignty so low, as to constitute an exceptional circumstance under Supreme Court precedent. The state may therefore require tribal members convicted of kidnapping to report their address to the state regardless of whether Pub.L. 280 expressly grants authority to do so.

GILDEA, Justice (concurring).
I join in the concurrence of Justice G. Barry Anderson.

PAGE, Justice (dissenting).
I respectfully dissent.

The issue here is whether the State of Minnesota has jurisdiction to enforce Minn.Stat. § 243.166 (2002) against an enrolled member of an Indian tribe who resides on the reservation of his tribe. Section 243.166 requires that certain predatory offenders provide the address of their residence to their assigned corrections agent or to law enforcement authorities. Minn.Stat. § 243.166, subd. 3(b) (2002). Despite the sovereignty of Indian tribes, state laws may be applied to tribal members: (1) if Congress has expressly so provided;

and (2) under exceptional circumstances even if Congress has not expressly provided. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 214-15, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987). The court finds express Congressional authorization for the enforcement of section 243.166 in Pub.L. 280. As the court recites, Pub.L. 280 (partially codified at 18 U.S.C. § 1162 (2000)) gives the state broad criminal, but limited civil, jurisdiction over most " Indian country" within the state.

The court now holds that section 243.166 is enforceable against enrolled tribal members on the reservation because it is " criminal prohibitory" in nature. It does so in spite of the fact that we have, in the past, twice held that section 243.166 is civil and regulatory, not criminal or penal. In light of these holdings, the court's reasoning is flawed.

The concurrence fares no better. The concurrence finds the circumstances here to be " exceptional," justifying the state's assertion of jurisdiction over Jones. For its definition of " exceptional," the concurrence relies on four United States Supreme Court cases: *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980); *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976); *Rice v. Rehner*, 463 U.S. 713, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983); and *Puyallup Tribe, Inc. v. Dept. of Game*, 433 U.S. 165, 97 S.Ct. 2616, 53 L.Ed.2d 667 (1977). But only one of those cases, Puyallup, involved the state's assertion of jurisdiction over tribal members on the reservation. The other three involved the state's assertion of jurisdiction over the activities of *non-tribal members* on the reservation. The Supreme Court has differentiated between the assertion of state jurisdiction over the activities of tribal members, versus non-tribal members, on the reservation. *See Cabazon*, 480

U.S. at 215-16, 107 S.Ct. 1083 (describing *Moe* and Colville as cases involving the assertion of jurisdiction over the on-reservation activities of nonmembers).

As noted, we have twice before considered whether section 243.166 is civil or criminal in nature. *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn.2002); ***16***Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn.1999). In *Boutin*, the defendant complained that requiring him to register as a sex offender violated his substantive due process rights because, although he was initially charged with one of the enumerated offenses for which registration was required, the offense to which he eventually pleaded guilty was not one of the enumerated offenses. 591 N.W.2d at 716. We held that section 243.166 is not criminal in nature, and therefore did not infringe upon Boutin's substantive due process rights, specifically, the presumption of innocence. *Id.* at 717. We pointed out that the predatory offender statute does not require an affirmative restraint, that historically similar registration statutes have not been regarded as punishment, that it does not promote the traditional aims of punishment because it does not involve confinement and is not intended to exact retribution, and that the primary purpose of the statute is to create an offender registry to assist in law enforcement investigations. *Id.*

In *Kaiser*, we reiterated that section 243.166 is regulatory and non-punitive in nature, and therefore the state was not required to advise a defendant that registration would be required as a consequence of a plea of guilty to one of the enumerated offenses for which registration is required. 641 N.W.2d at 907. We again observed that " the predatory offender law seeks to increase public safety by requiring a specific class of offenders to provide information to law enforcement authorities to assist in keeping track of them."

and we likened the statute to others that require offenders to obey special regulations, such as statutes criminalizing the possession of firearms by a convicted felon and statutes revoking driving privileges after a conviction of driving under the influence. *Id.* at 905-06. We further noted that section 243.166 " is an expression of a policy statement-' society has the right to know of predatory offenders' presence not in order to punish them, but in order to protect itself.' " *Id.* at 905 (quoting *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 373 (1995)).

Here, the court attempts to distinguish *Boutin* and *Kaiser* on grounds that " section 243.166 has been significantly revised since these cases were decided." Since we decided *Boutin* and *Kaiser*, the statute has been amended to increase the offense grade for a first violation, impose the registration requirement for additional offenses, lengthen the registration period for certain offenses, and modify other procedural requirements. Act of Apr. 3, 2000, ch. 311, art. 2, 2000 Minn. Laws 185, 189-207. But the statute has not been amended in ways that change its fundamental regulatory nature. For example, the statute still does not restrict an offender's ability to change residences or to move out of state. The registration requirement is still not permanent; Boutin and Kaiser were required to register for only ten years, as is respondent here. Minn.Stat. § 243.166, subd. 6(a) (2002). The registry is still considered private data under the Minnesota Government Data Practices Act. *Id.*, subd. 7. And while any violation is now considered a felony, under the version of the statute under which Boutin and Kaiser were prosecuted, a second violation was also considered a felony. Minn.Stat. § 243.166, subd. 5 (1998). The revisions to the 1998 version of the statute the court characterizes as " significant" are not relevant to the question we must answer in this case, that is, whether the state may enforce it against a tribal member

convicted under state law who resides on the reservation of his tribe. [FN1]

> FN1. Having attempted to distinguish *Boutin* and *Kaiser* on grounds that " section 243.166 has been significantly revised since these cases were decided," the court then claims it is not really necessary to distinguish them at all because " ' punitive' is not the same as ' prohibitory,' and the definition of ' regulatory' under the *Kennedy* analysis of *Boutin* and *Kaiser* does not have the same meaning as ' regulatory' employed by Pub.L. 280 and *Cabazon.*" In *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), the Supreme Court outlined the factors to be used in analyzing whether a statute is " penal" (and therefore invokes a defendant's constitutional right to substantive due process) or " regulatory." Those factors include
> [w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter,* whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.
> *Id.* at 168-69, 83 S.Ct. 554 (footnotes omitted).
> We applied the foregoing factors in concluding in *Boutin* that the statute was " regulatory." 591 N.W.2d at 717. These factors are remarkably similar to the factors the court now applies under the " shorthand test" in determining that the statute is criminal and

prohibitory when applied to Native Americans residing on the reservation. For example, in *Boutin* we observed first that section 243.166 " does not require an affirmative disability or restraint," nor does it " restrict Boutin's ability to change residences at will or even to move out of state." *Id.* In this case, the scope of the conduct at issue is the first factor the court considers; the statute still does not restrict the offender's ability to change residences at will or to move out of state entirely. Similarly, the *Kennedy* test we applied in *Boutin* considers the need for scienter in concluding that a statute is punitive; in this case, the court concludes that the " blameworthiness" of the actor is a factor to be considered in finding the statute to be prohibitory. Use of similar analytical approaches, whether derived from *Kennedy,* as in *Boutin* and *Kaiser,* or from the *Cabazon* " shorthand" test applied in this case, should not produce a dissimilar result based on the defendant to whom it is applied.

Given the similarity in analytical approaches, the court's attempt to clarify the differences between the result reached in *Boutin* and *Kaiser,* on the one hand, and the result reached in this case, on the other, only serves to highlight the disparity in treatment.

*17 The court also supports its conclusion with the rationale that neither *Boutin* nor *Kaiser* " addressed the classification of [the section] under the *Cabazon/Stone* test." I find that observation troubling. That neither Boutin nor Kaiser were Native Americans should not inform the court's classification of the statute. Our determination of the nature of the Registration of Predatory Offenders statute should remain the same regardless of which test we apply, and regardless of the nationality of the offender. In other words, the statute is

either civil and regulatory, or it is criminal and prohibitory. I fail to understand how we can conclude that the statute is civil and regulatory when applied to non-Native Americans and to Native Americans who reside off the reservation, while at the same time concluding that the statute is criminal and prohibitory when applied to Indians who reside on the reservation. Such a result is absurd.

Nor do I believe the court fully understands the implications of its holding today. By concluding that section 243.166 is criminal and prohibitory when applied to Indians who reside on the reservation, the court must also conclude that the constitutional issues raised by Boutin and Kaiser are alive and well when section 243.166 is enforced against such offenders. For example, if the statute is criminal when applied to Native Americans, then the court must conclude that, as Boutin argued, it violates a Native American's due process rights to require him to register when he has been only accused, but not convicted, ***18** of one of the enumerated offenses. If the statute is criminal when applied to Native Americans, the court must also conclude that, as Kaiser argued, a Native American's due process rights are violated if he is not advised, before agreeing to a guilty plea, that he will be required to register as a consequence of the plea.

In concluding that section 243.166 is generally prohibitory and therefore criminal, the court also relies on *State v. Busse*, 644 N.W.2d 79 (Minn.2002). In *Busse*, we held that Minnesota has jurisdiction to enforce Minn.Stat. § 171.24, subd. 5 (1998), against an enrolled tribal member who was driving on his reservation although his license had been revoked. 644 N.W.2d at 88. We held that the conduct in question, driving after cancellation as inimical to public safety, presents heightened public policy concerns and is a

criminal and prohibitory offense. *Id.* at 80. The statute at issue in *Busse* dealt with the narrow conduct of driving after cancellation and prohibited any driving by *anyone* whose driver's license had been cancelled. In contrast, Minn.Stat. § 243.166 does not purport to bar registered offenders from living in certain areas or communities, and does not prohibit them from moving, either within the state or into or out of the state. Rather, the statute only requires that a registrant notify the state of his or her address. [FN2]

> FN2. The court characterizes section 243.166 as permitting " residing at or moving to any address * * * *except by predatory offenders who fail to maintain a current address registration* as required by the relevant statute." (Emphasis added.) I find nothing in section 243.166 that bars offenders from moving, whether they register or not. Nothing in the statute requires offenders to request permission of the state before moving, and nothing in the statute allows the state to approve or disapprove of an offender's new residence. The conduct at issue, whether characterized as narrow or broad, is neither the residing nor the moving itself, but the failure to register.

The court also concludes the statute is criminal and prohibitory by focusing on the narrow activity of " an identified predatory offender residing or moving without maintaining a current address registration with the proper authorities," which happens to be the very thing barred by the statute. As we cautioned in *State v. Stone,* if we simply focused on the specific conduct prohibited by an individual statute, we could classify virtually every statute on the books as criminal under Pub.L. 280. 572 N.W.2d 725, 729-30 (1997). In equating the mandatory registration requirement to a prohibition, the court engages in precisely the reasoning we

cautioned against in *Stone*.

In *Stone*, we listed four non-exhaustive factors useful in determining whether an activity violates the state's public policy in a way serious enough to be considered criminal. *Id.* at 730. Specifically, we are to consider:
(1) the extent to which the activity directly threatens physical harm to persons or property or invades the rights of others; (2) the extent to which the law allows for exceptions and exemptions; (3) the blameworthiness of the actor; (4) the nature and severity of the potential penalties for a violation of the law.

Id. Clearly, the last two factors-the blameworthiness of the actor and the severity of the penalties for violation-support the criminal nature of the statute. Predatory offenders who " knowingly fail to register" are blameworthy, and the statute provides severe penalties for such knowing failure.

But it is also clear that a predatory offender's failure to register does not directly threaten physical harm to persons or property, nor invade the rights of others.***19** And, while registration aids the police in locating predatory offenders, an offender's failure to register, by and in itself, does not directly cast the possibility of physical harm on the community at large. Moreover, because the statute punishes only those predatory offenders who " knowingly fail to register," it can be argued that the statute provides an exception for those offenders who are unaware of the registration requirement. Finally, as we stated in *Stone*, these four factors are not exhaustive; rather, they function only as an aid to the ultimate determination of whether particular conduct is permitted or prohibited. *Id.* at 730. The fact that the statute generally permits a predatory offender to reside in Minnesota and to move into and out of the state should govern the court's

determination as to the nature of the statute.

For these reasons, I would conclude that the registration requirement of section 243.166 is civil, rather than criminal, in nature and thus the state's enforcement of it against Native Americans residing on the reservation is not specifically authorized by Pub.L. 280.

Finally, I note that this entire question will soon be a solution in search of a problem. In July 2006, Congress passed and the President signed the Adam Walsh Child Protection and Safety Act of 2006. Pub.L. No. 109-248, 120 Stat. 587 (to be partially codified at 42 U.S.C. §§ 16901-16991). The Adam Walsh Act, like its predecessor the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, requires registration of sex offenders, but specifically requires registration " in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student." Adam Walsh Act § 113(a), 120 Stat. at 593.[FN3] Significantly for this case, the Adam Walsh Act explicitly brings federally recognized Indian tribes within its jurisdiction, § 111(10)(H), 120 Stat. at 593, and requires those tribes to either maintain a registry of offenders or delegate the registration requirement " to another jurisdiction or jurisdictions within which the territory of the tribe is located." § 127(a)(1), 120 Stat. at 599-600. A tribe that does not elect, within one year of passage of the Adam Walsh Act, to maintain its own registry of offenders is deemed to have elected to delegate that function to another jurisdiction. § 127(a)(2), 120 Stat. at 600. Also significant is the fact that the Adam Walsh Act authorizes the attorney general to make the act applicable to sex offenders convicted before passage of the Adam Walsh Act or its implementation in a particular jurisdiction. § 113(d), 120 Stat. at 594.

FN3. The Adam Walsh Act also broadens the definition of " sex offense" such that those convicted in tribal courts are explicitly deemed sex offenders. § 111(1), (5), (6), 120 Stat. at 591-92.

Under the Adam Walsh Act, therefore, sex offenders who are members of federally recognized Indian tribes will be required to register, regardless of where they reside. If they reside on the reservation, they will be required to register with the tribe (or with the state, if the tribe has delegated, either explicitly or implicitly, its registry to the state). If they reside on the reservation but work or go to school off the reservation, they will be required to register with the state as well.

Jurisdictions are generally given three years from passage of the Adam Walsh Act to comply, § 124(a), 120 Stat. at 598, meaning that by July 2009 all Native American sex offenders like Jones will unquestionably be subject to registration, either with the state or with a tribe or both, ***20** and the problem presented by this case will have gone away. Unfortunately, the court's holding in this case will not.

I respectfully dissent.

ANDERSON, Russell A., Chief Justice (dissenting).
I join in the dissent of Justice Page.

18 U.S.C. Section 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

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b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; r shall deprive any Indian or any Indian tribe, band, or community f any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing r the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

243.166 REGISTRATION OF PREDATORY OFFENDERS.

Subdivision 1.[Repealed, 2005 c 136 art 3 s 31]

Subd. 1a. **Definitions.** (a) As used in this section, unless the context clearly indicates otherwise, the following terms have the meanings given them.

(b) "Bureau" means the Bureau of Criminal Apprehension.

(c) "Dwelling" means the building where the person lives under a formal or informal agreement to do so.

(d) "Incarceration" and "confinement" do not include electronic home monitoring.

(e) "Law enforcement authority" or "authority" means, with respect to a home rule charter or statutory city, the chief of police, and with respect to an unincorporated area, the county sheriff.

(f) "Motor vehicle" has the meaning given in section 169.01, subdivision 2.

(g) "Primary address" means the mailing address of the person's dwelling. If the mailing address is different from the actual location of the dwelling, primary address also includes the physical location of the dwelling described with as much specificity as possible.

(h) "School" includes any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education, that the person is enrolled in on a full-time

or part-time basis.

(i) "Secondary address" means the mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person's primary address. If the mailing address is different from the actual location of the place, secondary address also includes the physical location of the place described with as much specificity as possible.

(j) "Treatment facility" means a residential facility, as defined in section 244.052, subdivision 1 , and residential chemical dependency treatment programs and halfway houses licensed under chapter 245A, including, but not limited to, those facilities directly or indirectly assisted by any department or agency of the United States.

(k) "Work" includes employment that is full time or part time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

Subd. 1b. **Registration required.** (a) A person shall register under this section if:

(1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:

(i) murder under section 609.185, clause (2);

(ii) kidnapping under section 609.25;
(iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; 609.3451,
subdivision 3 ; or 609.3453; or
(iv) indecent exposure under section 617.23, subdivision 3;
(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiracy to commit false imprisonment in violation of section 609.255, subdivision 2 ; soliciting a minor to engage in prostitution in violation of section 609.322 or
609.324; soliciting a minor to engage in sexual conduct in violation of section 609.352; using a minor in a sexual performance in violation of section 617.246; or possessing pornographic work involving a minor in violation of section 617.247, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;
(3) the person was sentenced as a patterned sex offender under section 609.3455, subdivision 3a ; or
(4) the person was convicted of or adjudicated delinquent for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3).
(b) A person also shall register under this section if:
(1) the person was convicted of or adjudicated delinquent in

another state for an offense that would be a violation of a law described in paragraph (a) if committed in this state;

(2) the person enters this state to reside, work, or attend school, or enters this state and remains for 14 days or longer; and

(3) ten years have not elapsed since the person was released from confinement or, if the person was not confined, since the person was convicted of or adjudicated delinquent for the offense that triggers registration, unless the person is subject to a longer registration period under the laws of another state in which the person has been convicted or adjudicated, or is subject to lifetime registration.

If a person described in this paragraph is subject to a longer registration period in another state or is subject to lifetime registration, the person shall register for that time period regardless of when the person was released from confinement, convicted, or adjudicated delinquent.

(c) A person also shall register under this section if the person was committed pursuant to a court commitment order under section 253B.185 or Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, regardless of whether the person was convicted of any offense.

(d) A person also shall register under this section if:

(1) the person was charged with or petitioned for a felony violation or attempt to violate any of the offenses listed in

paragraph (a), clause (1), or a similar law of another state or the United States, or the person was charged with or petitioned for a violation of any of the offenses listed in paragraph (a), clause (2), or a similar law of another state or the United States;

(2) the person was found not guilty by reason of mental illness or mental deficiency after a trial for that offense, or found guilty but mentally ill after a trial for that offense, in states with a guilty but mentally ill verdict; and

(3) the person was committed pursuant to a court commitment order under section 253B.18 or a similar law of another state or the United States.

Subd. 2. **Notice.** When a person who is required to register under subdivision 1b, paragraph (a), is sentenced or becomes subject to a juvenile court disposition order, the court shall tell the person of the duty to register under this section and that, if the person fails to comply with the registration requirements, information about the offender may be made available to the public through electronic, computerized, or other accessible means. The court may not modify the person's duty to register in the pronounced sentence or disposition order. The court shall require the person to read and sign a form stating that the duty of the person to register under this section has been explained. The court shall forward the signed sex offender registration form, the complaint, and sentencing documents to the bureau. If a

person required to register under subdivision 1b, paragraph (a), was not notified by the court of the registration requirement at the time of sentencing or disposition, the assigned corrections agent shall notify the person of the requirements of this section. When a person who is required to register under subdivision 1b, paragraph (c) or (d), is released from commitment, the treatment facility shall notify the person of the requirements of this section. The treatment facility shall also obtain the registration information required under this section and forward it to the bureau.

Subd. 3. **Registration procedure.** (a) Except as provided in subdivision 3a, a person required to register under this section shall register with the corrections agent as soon as the agent is assigned to the person. If the person does not have an assigned corrections agent or is unable to locate the assigned corrections agent, the person shall register with the law enforcement authority that has jurisdiction in the area of the person's primary address.

(b) Except as provided in subdivision 3a, at least five days before the person starts living at a new primary address, including living in another state, the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person currently is registered. If the person will be living in a new state and that state has a registration requirement, the

person shall also give written notice of the new address to the designated registration agency in the new state. A person required to register under this section shall also give written notice to the assigned corrections agent or to the law enforcement authority that has jurisdiction in the area of the person's primary address that the person is no longer living or staying at an address, immediately after the person is no longer living or staying at that address. The corrections agent or law enforcement authority shall, within two business days after receipt of this information, forward it to the bureau. The bureau shall, if it has not already been done, notify the law enforcement authority having primary jurisdiction in the community where the person will live of the new address. If the person is leaving the state, the bureau shall notify the registration authority in the new state of the new address. The person's registration requirements under this section terminate after the person begins living in the new state and the bureau has confirmed the address in the other state through the annual verification process on at least one occasion.(c) A person required to register under subdivision 1b, paragraph (b), because the person is working or attending school in Minnesota shall register with the law enforcement authority that has jurisdiction in the area where the person works or attends school. In addition to other information required by this section, the person shall provide the address of the school or of the location where the person is employed.

A person shall comply with this paragraph within five days of beginning employment or school. A person's obligation to register under this paragraph terminates when the person is no longer working or attending school in Minnesota.

(d) A person required to register under this section who works or attends school outside of Minnesota shall register as a predatory offender in the state where the person works or attends school. The person's corrections agent, or if the person does not have an assigned corrections agent, the law enforcement authority that has jurisdiction in the area of the person's primary address shall notify the person of this requirement.

Subd. 3a. **Registration procedure when person lacks primary address.** (a) If a person leaves a primary address and does not have a new primary address, the person shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address.

(b) A person who lacks a primary address shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours after entering the jurisdiction. Each time a person who lacks a primary address moves to a new jurisdiction without acquiring a new primary address, the person shall register with the law enforcement

authority that has jurisdiction in the area where the person is staying within 24 hours after entering the jurisdiction.

(c) Upon registering under this subdivision, the person shall provide the law enforcement authority with all of the information the individual is required to provide under subdivision 4a. However, instead of reporting the person's primary address, the person shall describe the location of where the person is staying with as much specificity as possible.

(d) Except as otherwise provided in paragraph (e), if a person continues to lack a primary address, the person shall report in person on a weekly basis to the law enforcement authority with jurisdiction in the area where the person is staying. This weekly report shall occur between the hours of 9:00 a.m. and 5:00 p.m. The person is not required to provide the registration information required under subdivision 4a each time the offender reports to an authority, but the person shall inform the authority of changes to any information provided under this subdivision or subdivision 4a and shall otherwise comply with this subdivision.

(e) If the law enforcement authority determines that it is impractical, due to the person's unique circumstances, to require a person lacking a primary address to report weekly and in person as required under paragraph (d), the authority may authorize the person to follow an alternative reporting procedure. The authority shall consult with the person's

corrections agent, if the person has one, in establishing the specific criteria of this alternative procedure, subject to the following requirements:

(1) the authority shall document, in the person's registration record, the specific reasons why the weekly in-person reporting process is impractical for the person to follow;

(2) the authority shall explain how the alternative reporting procedure furthers the public safety objectives of this section;

(3) the authority shall require the person lacking a primary address to report in person at least monthly to the authority or the person's corrections agent and shall specify the location where the person shall report. If the authority determines it would be more practical and would further public safety for the person to report to another law enforcement authority with jurisdiction where the person is staying, it may, after consulting with the other law enforcement authority, include this requirement in the person's alternative reporting process;

(4) the authority shall require the person to comply with the weekly, in-person reporting process required under paragraph (d), if the person moves to a new area where this process would be practical;

(5) the authority shall require the person to report any changes to the registration information provided under subdivision 4a and to comply with the periodic registration requirements specified under paragraph (f); and

(6) the authority shall require the person to comply with the

requirements of subdivision 3, paragraphs (b) and (c), if the person moves to a primary address.

(f) If a person continues to lack a primary address and continues to report to the same law enforcement authority, the person shall provide the authority with all of the information the individual is required to provide under this subdivision and subdivision 4a at least annually, unless the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under section 253B.185 or a similar law of another state or the United States. If the person is required to register under subdivision 1b, paragraph (c), the person shall provide the law enforcement authority with all of the information the individual is required to report under this subdivision and subdivision 4a at least once every three months.

(g) A law enforcement authority receiving information under this subdivision shall forward registration information and changes to that information to the bureau within two business days of receipt of the information.

(h) For purposes of this subdivision, a person who fails to report a primary address will be deemed to be a person who lacks a primary address, and the person shall comply with the requirements for a person who lacks a primary address.

Subd. 4. **Contents of registration.** (a) The registration provided to the corrections agent or law enforcement

authority, must consist of a statement in writing signed by the person, giving information required by the bureau, a fingerprint card, and photograph of the person taken at the time of the person's release from incarceration or, if the person was not incarcerated, at the time the person initially registered under this section. The registration information also must include a written consent form signed by the person allowing a treatment facility or residential housing unit or shelter to release information to a law enforcement officer about the person's admission to, or residence in, a treatment facility or residential housing unit or shelter. Registration information on adults and juveniles may be maintained together notwithstanding section 260B.171, subdivision 3.

(b) For persons required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under section 253B.185 or a similar law of another state or the United States, in addition to other information required by this section, the registration provided to the corrections agent or law enforcement authority must include the person's offense history and documentation of treatment received during the person's commitment. This documentation is limited to a statement of how far the person progressed in treatment during commitment.

(c) Within three days of receipt, the corrections agent or law enforcement authority shall forward the registration

information to the bureau. The bureau shall ascertain whether the person has registered with the law enforcement authority in the area of the person's primary address, if any, or if the person lacks a primary address, where the person is staying, as required by subdivision 3a. If the person has not registered with the law enforcement authority, the bureau shall send one copy to that authority.

(d) The corrections agent or law enforcement authority may require that a person required to register under this section appear before the agent or authority to be photographed. The agent or authority shall forward the photograph to the bureau.

(1) Except as provided in clause (2), the agent or authority shall require a person required to register under this section who is classified as a level III offender under section 244.052 to appear before the agent or authority at least every six months to be photographed.

(2) The requirements of this paragraph shall not apply during any period where the person to be photographed is: (i) committed to the commissioner of corrections and incarcerated, (ii) incarcerated in a regional jail or county jail, or (iii) committed to the commissioner of human services and receiving treatment in a secure treatment facility.

(e) During the period a person is required to register under this section, the following provisions apply:

(1) Except for persons registering under subdivision 3a, the

bureau shall mail a verification form to the person's last reported primary address. This verification form must provide notice to the offender that, if the offender does not return the verification form as required, information about the offender may be made available to the public through electronic, computerized, or other accessible means. For persons who are registered under subdivision 3a, the bureau shall mail an annual verification form to the law enforcement authority where the offender most recently reported. The authority shall provide the verification form to the person at the next weekly meeting and ensure that the person completes and signs the form and returns it to the bureau.

(2) The person shall mail the signed verification form back to the bureau within ten days after receipt of the form, stating on the form the current and last address of the person's residence and the other information required under subdivision 4a.

(3) In addition to the requirements listed in this section, a person who is assigned to risk level II or III under section 244.052, and who is no longer under correctional supervision for a registration offense, or a failure to register offense, but who resides, works, or attends school in Minnesota, shall have an annual in-person contact with a law enforcement authority as provided in this section. If the person resides in Minnesota, the annual in-person contact shall be with the law enforcement authority that has jurisdiction over the

person's primary address or, if the person has no address, the location where the person is staying. If the person does not reside in Minnesota but works or attends school in this state, the person shall have an annual in-person contact with the law enforcement authority or authorities with jurisdiction over the person's school or workplace. During the month of the person's birth date, the person shall report to the authority to verify the accuracy of the registration information and to be photographed. Within three days of this contact, the authority shall enter information as required by the bureau into the predatory offender registration database and submit an updated photograph of the person to the bureau's predatory offender registration unit.

(4) If the person fails to mail the completed and signed verification form to the bureau within ten days after receipt of the form, or if the person fails to report to the law enforcement authority during the month of the person's birth date, the person is in violation of this section.

(5) For any person who fails to mail the completed and signed verification form to the bureau within ten days after receipt of the form and who has been determined to be a risk level III offender under section 244.052, the bureau shall immediately investigate and notify local law enforcement authorities to investigate the person's location and to ensure compliance with this section. The bureau also shall immediately give notice of the person's violation of this

section to the law enforcement authority having jurisdiction over the person's last registered address or addresses.

For persons required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under section 253B.185 or a similar law of another state or the United States, the bureau shall comply with clause (1) at least four times each year. For persons who, under section 244.052, are assigned to risk level III and who are no longer under correctional supervision for a registration offense or a failure to register offense, the bureau shall comply with clause (1) at least two times each year. For all other persons required to register under this section, the bureau shall comply with clause (1) each year within 30 days of the anniversary date of the person's initial registration.

(f) When sending out a verification form, the bureau shall determine whether the person to whom the verification form is being sent has signed a written consent form as provided for in paragraph (a). If the person has not signed such a consent form, the bureau shall send a written consent form to the person along with the verification form. A person who receives this written consent form shall sign and return it to the bureau at the same time as the verification form.

Subd. 4a. **Information required to be provided.** (a) A person required to register under this section shall provide to the corrections agent or law enforcement authority the following

information:

(1) the person's primary address;

(2) all of the person's secondary addresses in Minnesota, including all addresses used for residential or recreational purposes;

(3) the addresses of all Minnesota property owned, leased, or rented by the person;

(4) the addresses of all locations where the person is employed;

(5) the addresses of all schools where the person is enrolled; and

(6) the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person.

(b) The person shall report to the agent or authority the information required to be provided under paragraph (a), clauses (2) to (6), within five days of the date the clause becomes applicable. If because of a change in circumstances any information reported under paragraph (a), clauses (1) to (6), no longer applies, the person shall immediately inform the agent or authority that the information is no longer valid. If the person leaves a primary address and does not have a new primary address, the person shall register as provided in subdivision 3a.

Subd. 4b. **Health care facility; notice of status.** (a) For the purposes of this subdivision, "health care facility" means a facility licensed by:

(1) the commissioner of health as a hospital, boarding care home or supervised living facility under sections 144.50 to 144.58, or a nursing home under chapter 144A; or

(2) the commissioner of human services as a residential facility under chapter 245A to provide adult foster care, adult mental health treatment, chemical dependency treatment to adults, or residential services to persons with developmental disabilities.

(b) Prior to admission to a health care facility, a person required to register under this section shall disclose to:

(1) the health care facility employee processing the admission the person's status as a registered predatory offender under this section; and

(2) the person's corrections agent, or if the person does not have an assigned corrections agent, the law enforcement authority with whom the person is currently required to register, that inpatient admission will occur.

(c) A law enforcement authority or corrections agent who receives notice under paragraph (b) or who knows that a person required to register under this section is planning to be admitted and receive, or has been admitted and is receiving health care at a health care facility shall notify the administrator of the facility and deliver a fact sheet to the administrator containing the following information: (1) name and physical description of the offender; (2) the offender's conviction history, including the dates of conviction; (3) the

risk level classification assigned to the offender under section 244.052, if any; and (4) the profile of likely victims.

(d) Except for a hospital licensed under sections 144.50 to 144.58, if a health care facility receives a fact sheet under paragraph (c) that includes a risk level classification for the offender, and if the facility admits the offender, the facility shall distribute the fact sheet to all residents at the facility. If the facility determines that distribution to a resident is not appropriate given the resident's medical, emotional, or mental status, the facility shall distribute the fact sheet to the patient's next of kin or emergency contact.

Subd. 5. **Criminal penalty.** (a) A person required to register under this section who knowingly violates any of its provisions or intentionally provides false information to a corrections agent, law enforcement authority, or the bureau is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

(b) Except as provided in paragraph (c), a person convicted of violating paragraph (a) shall be committed to the custody of the commissioner of corrections for not less than a year and a day, nor more than five years.

(c) A person convicted of violating paragraph (a), who has previously been convicted of or adjudicated delinquent for violating this section or a similar statute of another state or

the United States, shall be committed to the custody of the commissioner of corrections for not less than two years, nor more than five years.

(d) Prior to the time of sentencing, the prosecutor may file a motion to have the person sentenced without regard to the mandatory minimum sentence established by this subdivision. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the person without regard to the mandatory minimum sentence if the court finds substantial and compelling reasons to do so. Sentencing a person in the manner described in this paragraph is a departure from the Sentencing Guidelines.

(e) A person convicted and sentenced as required by this subdivision is not eligible for probation, parole, discharge, work release, conditional release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135.

Subd. 5a. **Ten-year conditional release for violations committed by level III offenders.**

Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court commits a person to the custody of the commissioner of corrections for violating subdivision 5 and, at the time of the violation, the person was assigned to

risk level III under section 244.052, the court shall provide that after the person has completed the sentence imposed, the commissioner shall place the person on conditional release for ten years. The terms of conditional release are governed by section 609.3455, subdivision 8.

Subd. 6. **Registration period.** (a) Notwithstanding the provisions of section 609.165, subdivision 1 , and except as provided in paragraphs (b), (c), and (d), a person required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later. For a person required to register under this section who is committed under section 253B.18 or 253B.185, the ten-year registration period does not include the period of commitment.

(b) If a person required to register under this section fails to provide the person's primary address as required by subdivision 3, paragraph (b), fails to comply with the requirements of subdivision 3a, fails to provide information as required by subdivision 4a, or fails to return the verification form referenced in subdivision 4 within ten days, the commissioner of public safety may require the person to continue to register for an additional period of five years. This five-year period is added to the end of the offender's registration period.

(c) If a person required to register under this section is subsequently incarcerated following a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense, the person shall continue to register until ten years have elapsed since the person was last released from incarceration or until the person's probation, supervised release, or conditional release period expires, whichever occurs later.

(d) A person shall continue to comply with this section for the life of that person:

(1) if the person is convicted of or adjudicated delinquent for any offense for which registration is required under subdivision 1b, or any offense from another state or any federal offense similar to the offenses described in subdivision 1b, and the person has a prior conviction or adjudication for an offense for which registration was or would have been required under subdivision 1b, or an offense from another state or a federal offense similar to an offense described in subdivision 1b;

(2) if the person is required to register based upon a conviction or delinquency adjudication for an offense under section 609.185, clause (2), or a similar statute from another state or the United States;

(3) if the person is required to register based upon a conviction for an offense under section 609.342, subdivision 1, paragraph (a), (c), (d), (e), (f), or (h);

609.343, subdivision 1, paragraph
(a), (c), (d), (e), (f), or (h); 609.344, subdivision 1, paragraph (a), (c), or (g); or 609.345,
subdivision 1 , paragraph (a), (c), or (g); or a statute from another state or the United States similar to the offenses described in this clause; or(4) if the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under section 253B.185 or a similar law of another state or the United States.

(e) A person described in subdivision 1b, paragraph (b), who is required to register under the laws of a state in which the person has been previously convicted or adjudicated delinquent, shall register under this section for the time period required by the state of conviction or adjudication unless a longer time period is required elsewhere in this section.

Subd. 7. **Use of data.** Except as otherwise provided in subdivision 7a or sections 244.052 and 299C.093, the data provided under this section is private data on individuals under section 13.02, subdivision 12. The data may be used only for law enforcement and corrections purposes. State-operated services, as defined in section 246.014, are also authorized to have access to the data for the purposes described in section 246.13, subdivision 2, paragraph (b).

Subd 7a. **Availability of information on offenders who**

are out of compliance with registration law. (a) The bureau may make information available to the public about offenders who are 16 years of age or older and who are out of compliance with this section for 30 days or longer for failure to provide the offenders' primary or secondary addresses. This information may be made available to the public through electronic, computerized, or other accessible means. The amount and type of information made available is limited to the information necessary for the public to assist law enforcement in locating the offender.

(b) An offender who comes into compliance with this section after the bureau discloses information about the offender to the public may send a written request to the bureau requesting the bureau to treat information about the offender as private data, consistent with subdivision 7. The bureau shall review the request and promptly take reasonable action to treat the data as private, if the offender has complied with the requirement that the offender provide the offender's primary and secondary addresses, or promptly notify the offender that the information will continue to be treated as public information and the reasons for the bureau's decision.

(c) If an offender believes the information made public about the offender is inaccurate or incomplete, the offender may challenge the data under section 13.04, subdivision 4.

(d) The bureau is immune from any civil or criminal liability

that might otherwise arise, based on the accuracy or completeness of any information made public under this subdivision, if the bureau acts in good faith.

Subd. 8.[Repealed, 2005 c 136 art 3 s 31]

Subd. 9. **Offenders from other states.** (a) When the state accepts an offender from another state under a reciprocal agreement under the interstate compact authorized by section 243.16, the interstate compact authorized by section 243.1605, or under any authorized interstate agreement, the acceptance is conditional on the offender agreeing to register under this section when the offender is living in Minnesota.

(b) The Bureau of Criminal Apprehension shall notify the commissioner of corrections:

(1) when the bureau receives notice from a local law enforcement authority that a person from another state who is subject to this section has registered with the authority, unless the bureau previously received information about the offender from the commissioner of corrections;

(2) when a registration authority, corrections agent, or law enforcement agency in another state notifies the bureau that a person from another state who is subject to this section is moving to Minnesota; and

(3) when the bureau learns that a person from another state is in Minnesota and allegedly in violation of subdivision 5 for failure to register.

(c) When a local law enforcement agency notifies the bureau of an out-of-state offender's registration, the agency shall provide the bureau with information on whether the person is subject to community notification in another state and the risk level the person was assigned, if any.

(d) The bureau must forward all information it receives regarding offenders covered under this subdivision from sources other than the commissioner of corrections to the commissioner.

(e) When the bureau receives information directly from a registration authority, corrections agent, or law enforcement agency in another state that a person who may be subject to this section is moving to Minnesota, the bureau must ask whether the person entering the state is subject to community notification in another state and the risk level the person has been assigned, if any.

(f) When the bureau learns that a person subject to this section intends to move into Minnesota from another state or has moved into Minnesota from another state, the bureau shall notify the law enforcement authority with jurisdiction in the area of the person's primary address and provide all information concerning the person that is available to the bureau.

(g) The commissioner of corrections must determine the parole, supervised release, or conditional release status of persons who are referred to the commissioner under this

subdivision. If the commissioner determines that a person is subject to parole, supervised release, or conditional release in another state and is not registered in Minnesota under the applicable interstate compact, the commissioner shall inform the local law enforcement agency that the person is in violation of section 243.161. If the person is not subject to supervised release, the commissioner shall notify the bureau and the local law enforcement agency of the person's status.

Subd. 10.[Repealed, 1Sp2001 c 8 art 9 s 8]

Subd. 10. **Venue; aggregation.** (a) A violation of this section may be prosecuted in any jurisdiction where an offense takes place. However, the prosecutorial agency in the jurisdiction where the person last registered a primary address is initially responsible to review the case for prosecution.

(b) When a person commits two or more offenses in two or more counties, the accused may be prosecuted for all of the offenses in any county in which one of the offenses was committed.

Subd. 11. **Certified copies as evidence.** Certified copies of predatory offender registration records are admissible as substantive evidence when necessary to prove the commission of a violation of this section.

STATE OF MINNESOTA

JUDGMENT

State of Minnesota, Appellant vs. Peter John Jones, Respondent

Supreme Court

Appellate Court # A05-365

Trial Court # K8-04-1154

Pursuant to a decision of Supreme Court duly made and entered, it is determined and adjudged that the decision of the Cass County District Court herein appealed from be and the same hereby is reversed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed: May 14, 2007

FOR THE COURT

Attest: Frederick K. Grittner
Clerk of the Appellate Courts

By: _____
Assistant Clerk

13

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FILED
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SUPREME COURT, U.S.

No. 07-412

In the Supreme Court of the United States

Peter John Jones,

Petitioner,

v.

The State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the State of Minnesota have jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian reservation for failure to comply with the requirements of Minn. Stat. §243.166, the predatory offender registration statute?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

QUESTION PRESENTED i

STATEMENT OF THE CASE 1

ARGUMENT 4

I. The State of Minnesota has jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian reservation for failure to comply with the requirements of Minn. Stat. § 243.166 (2002), the predatory offender registration statute 5

A. There is no reason to revisit *California v. Cabazon Band Of Indians,* 107 S.Ct. 1083 (1983) and Public Law No. 280, 67 Stat. 588 5

B. A predatory offender's failure to register is inimical to public safety, and, consequently, presents heightened public criminal policy concerns 10

C. The plain language and history of Minn. Stat. § 243.166, subd. 5, demonstrates that it is "criminal/prohibitory" for purposes of state jurisdiction under Public Law 280 11

D. Analyzing the failure to register under the shorthand test in *Stone* dictates the conduct is criminally prohibited and is consistent with *Cabazon*..... 14

E. Taking jurisdiction away from the states would make the State less safe, and should be avoided at all costs 16

F. The United States Congress has granted power to the states to enforce predatory offender statutes 16

G. The Leech Lake Reservation Tribal Council has recognized that predatory offender registration statutes serve a strong public policy interest..... 18

CONCLUSION 19

RESPONDENT'S APPENDIX

Leech Lake Reservation Tribal Council Resolution No. 2006-37 ..... AR-1

Governor's Task Force on Missing Children, Final Report, March 12, 1991 ..... AR-5

Task Force on Sexual Predators, Final Report to the Minnesota Legislature, January 4, 1995 ... AR-33

TABLE OF AUTHORITIES

FEDERAL CASES **Page**

California v. Cabazon Band of Indians
480 U.S. 202, 107 S.Ct. 1083 (1987) .....*passim*

STATE CASES

Boutin v. LaFleur
591 N.W. 2d 711 (Minn. 1999) 12

State v. Busse
644 N.W. 2d 79 (Minn. 2002) 8, 9, 10

State v. Johnson
598 N.W. 2d 680 (Minn. 1999) 15

State v. Jones
700 N.W.2d 556 (Minn. Ct. App. 2005) 3

State v. Jones
729 N.W. 2d 1 (Minn. 2007) ..... *passim*

State v. R.M.H.
617 N.W. 2d 55 (Minn. 2000) 5

State v. Stone
572 N.W.2d 725 (Minn. 1997) .....*passim*

FEDERAL STATUTES

18 U.S.C. § 1162 6

25 U.S.C. § 1302 17

Adam Walsh Act, 42 U.S.C. 16901-16991 4

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 ..... 16, 17

Public Law 280 ..... *passim*

Supreme Court Rule 10 4

STATE LAWS

Minn. Stat. § 171.24 8

Minn. Stat. § 243.166 ..... *passim*

Minn. Stat. § 243.166 (1991) 11

Minn. Stat. § 243.166 (2000) 13

Minn. Stat. § 243.166 (2002) 2, 3, 4

1993 Minn. Laws 2090 12

1994 Minn. Laws, ch. 636 14

LEGISLATIVE HISTORY

Journal of the House, 81st Leg. Session, 5569 13

LAW REVIEW

The New Battleground for Public Law 280 Jurisdiction: Sex Offender Registration in Indian Country, 101 Nw.U.L. Rev. 897, 926 (2007) 18

STATEMENT OF THE CASE

Petitioner Peter John Jones is an enrolled member of the Leech Lake Band of Ojibwe. Petitioner resides on the Leech lake Indian Reservation, located in Cass County, Minnesota. In July 2001, Petitioner completed a Predatory Offender Notification and Registration form, as required by law, after previously being convicted of the felony of kidnapping. On July 21, 2003, Petitioner completed a Change of Address form notifying the Minnesota Bureau of Criminal Apprehension (BCA) that his new residential address was Unit 007, Pike Bay Township, PO Box 225, Cass Lake, in Cass County, Minnesota. On March 11, 2004, a Cass County Sheriff's Department employee, who was performing routine checks on Cass County predatory offenders, discovered that Petitioner appeared to be noncompliant with the registration requirements of Minn. Stat. §243.166. A Cass County Deputy was assigned to check Petitioner's last known address and was informed Petitioner was residing at a new address located in Cass County, Minnesota. It is undisputed both of the addresses are located on the Leech Lake Indian Reservation. Appendix A, 18-19.[1]

The BCA provided documentation that it had sent residence verification letters, as prescribed by law, to Petitioner on July 1, 2002; June 30, 2003; July 24, 2003; March 30, 2004: and June 28, 2004. Petitioner returned none of the annual registration documents within the 10-day time period prescribed by the statute. Appendix A, 19-20.

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[1] "Appendix A" refers to the Appendix of Petitioner's Petition for Writ of Certiorari.

Petitioner was charged with one count of violating Minn. Stat. § 243.166, subd. 3(b), Registration of Predatory Offenders. A Person is guilty of this crime if the person fails to advise law enforcement of a change of his primary address at least five days prior to changing address. Appendix A, 20.

Petitioner was charged with five counts alleging violations of Minn. Stat. § 243.166, subd. 4(e), Registration Predatory Offenders. A person is guilty of this crime if the person fails to mail the completed and signed verification of address form to the Bureau of Criminal Apprehension within 10 days after receipt of the form. Appendix A, 20.

The "criminal" penalty for these offenses is found in Minn. Stat. § 243.166, subd. 5, (2002) stating a person required to register under this section who knowingly violates any of its provisions or intentionally provides false information to a corrections agent, law enforcement authority, or the bureau of criminal apprehension is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

The Minnesota Supreme Court described the procedural history as follows:

> In December 2004, the state charged Jones with one count of failing to notify the BCA of his change of address and five counts of failing to return the required address-verification forms in violation of Minn. Stat. § 243.166, subds. 3(b), 4(e), 5 (2002). Jones moved to dismiss the charges, arguing that the

> State of Minnesota lacked subject matter jurisdiction to prosecute him. A hearing was held on the motion and the district court granted Jones's motion to dismiss. The court concluded that Minn. Stat. § 243.166 is civil/regulatory in nature, and therefore the state lacked subject matter jurisdiction to prosecute Jones. The state appealed, and the court of appeals affirmed the district court. *Jones*, 700 N.W.2d at 558. The state then sought review by our court, arguing that both the district court and the court of appeals erred in concluding that the state lacked jurisdiction.

Appendix A, 20.

The Minnesota Supreme Court held that the district court and court of appeals erred when they concluded that Minnesota courts do not have jurisdiction to enforce the statute against a tribal member who fails to register while residing on his Indian reservation. The Court further held that Minnesota courts have subject matter jurisdiction to enforce the charge of residing or moving without maintaining a current address registration against Jones, even though he is an enrolled member of the Leech Lake Band of Ojibwe who resides-- and therefore violated section 243.166—on the Leech Lake Reservation. Appendix A, 37.

REASONS FOR DENYING THE PETITION

The petition for writ of certiorari should be denied because petitioner has failed to show any "compelling reasons" for this Court to grant discretionary review. Supreme Court Rule 10.

The State of Minnesota has jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian Reservation for failure to comply with the requirements of Minnesota Statutes §243.166, the Predatory Offender Registration statute. The Minnesota Supreme Court's decision in *State v. Jones*, 728 N.W.2d 1, 12 (Minn. 2007) is consistent with the U.S. Supreme Court decision in *California v. Cabezon Band of Mission Indians*, 480 U.S. 202 (1987). The Minnesota Supreme Court, while having two concurring opinions, did find in a five to two vote, that Minnesota Statute §243.166 met the standard set forth by the U.S. Supreme Court in *Cabezon*. Petitioners are incorrect in their assertion that the Adam Walsh Act, 42 U.S.C. 16901-16991 creates a federal penalty for failing to register by all predatory offenders and thus State intervention is not necessary. Minnesota Statute §243.166, includes individuals convicted of murder and kidnapping offenses wherein the victims are not juveniles. Federal law does not prohibit the State of Minnesota from passing laws that are more inclusive in order to protect the general public.

I. The State of Minnesota has jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian reservation for failure to comply with the requirements of Minn. Stat. § 243.166 (2002), the predatory offender registration statute.

A. There is no reason to revisit *California v. Cabazon Band of Indians,* 107 S.Ct. 1083 (1983) and Public Law No. 280, 67 Stat. 588.

It is well established that a state may enforce its laws against enrolled tribal members on the tribal reservation when Congress has expressly so provided. *California v. Cabazon Band of Indians,* 107 S. Ct. at 1087. Minnesota is one of six states to which Congress has granted such subject-matter jurisdiction under Public Law 280. Pursuant to this grant of authority, Minnesota has broad criminal and limited civil jurisdiction over all Indian country within the state, except the Red Lake Reservation, which Public Law 280 excepted from the grant of authority, and the Bois Forte Reservation at Nett Lake. *State v. Stone,* 572 N.W. 2d 725, 728 & n.3 (Minn. 1997). *See* also *State v. R.M.H.,* 617 N.W. 2d 55, 58 (Minn. 2000). Public Law 280 specifically states:

> (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the

> name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory(.)

18 USC § 1162 (a).

In *Cabazon,* the United States Supreme Court adopted the following test for determining whether a state law is criminal and hence fully enforceable on a reservation:

> (I)f the intent of the state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.

107 S. Ct. at 1088. The Court noted that the distinction it drew is not a bright-line rule, adding: "The applicable state laws governing an activity must be examined in detail before they can be categorized as regulatory or prohibitory." *Id.* at 1089.

Recognizing that *Cabazon* did not clearly state whether the "conduct at issue" that is to be analyzed is the broad conduct or the narrow, the Minnesota

Supreme Court in Stone developed a two-step approach. *State v. Stone,* 572 N.W. 2d 725, 729-730 (Minn. 1997). As the Court observed "(t)his distinction becomes crucial when the broad conduct is generally permitted but the narrow conduct is generally prohibited, or vice versa." *Id.* at 729. When the narrow conduct presents substantially different or heightened public policy concerns, we will focus on the narrow conduct. *Id.* at 730. *See* also *Jones,* 729 N.W.2d at 5.

The first step of the *Stone* approach is to determine the focus of the *Cabazon* test. *Id.* at 730. The broad conduct will be the focus of the test unless the narrow conduct "presents substantially different or heightened public policy concerns." *Id.* Once the focus is identified, the second step is simply to apply the *Cabazon* test: If the conduct is generally permitted, subject to exception, then the law controlling it is civil/regulatory; if the conduct is generally prohibited, the law is criminal/prohibitory. *Id.*; *Jones,* 729 N.W.2d at 5.

The Court in *Stone* specified that in close cases, "conduct is criminal if it violates the state's public policy." *Stone,* 572 N.W. 2d at 730. The Court interpreted "public policy," as used in the *Cabazon* test, to mean public *criminal* policy. Public criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breaches in the social fabric, which threaten grave harm to person or property. Id. The Court identified four factors as useful when determining whether an activity violates the state's criminal policy:

(1) the extent to which the activity directly threatens physical harm to person or property, or invades other's rights;

(2) the extent to which the law provides for exceptions and exemptions;

(3) the blame worthiness of the actor; and

(4) the nature and severity of the potential penalties for a violation of the law.

Id..; *Stone,* 729 N.W.2d 5,6.

In *Jones,* the Minnesota Supreme Court concluded that the broad conduct at issue is residing at an address or moving to a new address by Minnesota residents in general. *Jones,* 729 N.W.2d at 6. The narrow conduct we must analyze is an identified predatory offender residing or moving without maintaining a current address registration with the proper authorities. Id.

In *State v. Busse,* 644 N.W. 2d 79 (Minn. 2002), the respondent was charged by complaint with driving after cancellation as inimical to public safety, a gross misdemeanor. His driver's license had been cancelled, following his fourth alcohol-related offense. Respondent, an enrolled member of the White Earth Band of Ojibwe, moved to dismiss for lack of subject-matter jurisdiction as the offense occurred within the boundaries of the White Earth Reservation. Respondent was charged and convicted of Driving After Cancellation as Inimical to Public Safety, a gross misdemeanor, under Minn. Stat. § 171.24, subd. 5. The Court explained as follows: Busse's gross misdemeanor offense is but one piece of a larger fabric of laws aimed at increasing the severity of punishment against those persons who, due to their

alcohol and drug use, pose a particularly severe threat to the safety of others. The pattern of behavior signals both a significant alcohol or drug problem and a defiance of the laws of our state and, thus, a significant risk to public safety. The ability of Minnesota to protect its citizens would be severely compromised if the state is not allowed to enforce cancellation of driving privileges, one of the most important remedies in terms of public safety, for driving while intoxicated. Id. at 86. The court followed *Stone's* direction to consider the extent to which the activity directly threatens physical harm. *Stone,* 572 N.W.2d at 730. Busse argued his driving could not pose heightened public policy concerns because he was not intoxicated while driving. The Court explained however, Busse's license was canceled because the commissioner determined that any driving of a motor vehicle on a public road by Busse was inimical to public safety. Busse would only be labeled as inimical to public safety under the statute if he had demonstrated at least three incidents in which he consumed sufficient alcohol or drugs to put him over the legal limit, drove, and was caught. Given this history, we can conclude that his driving poses a risk to public safety and implicates heightened public policy concerns. *Busse,* Id. at 85, 86. The court summarized, the criminal sanction imposed, the direct threat to physical harm, the need for the state to be able to enforce cancellations based on a threat to public safety, and the absence of exception to the offense of driving after cancellations based on a threat to public safety, and the absence of exception to the offense of driving after cancellation based on being inimical to public safety all

demonstrate heightened public policy concerns. The court concluded the offense of driving after cancellation as inimical to public safety presents substantially different or heightened public policy concerns. *Busse,* 644 N.W.2d at 87, 88.

In *State v. Busse,* 644 N.W. 2d at 88, the court concluded under the first step of the *Cabazon/Stone* test that Busse's offense presented heightened public policy concerns, and that under the second step of the test driving after cancellation or denial as inimical to public safety is strictly prohibited conduct within the border of the state of Minnesota. Unlike driving in general, driving after cancellation as inimical to public safety, is generally prohibited conduct and under the *Cabazon/Stone* analysis the offense is criminal/prohibitory.

In *Jones* the Minnesota Supreme Court citing *Busse* explained its characterization of the broad and narrow conduct at issue based on what is required or prohibited of certain populations is consistent with the approach taken in *Busse. Jones,* 729 N.W. 2d at 6.

B. A predatory offender's failure to register is inimical to public safety, and, consequently, presents heightened public criminal policy concerns.

The predatory offender registration requirement involves heightened public policy concerns because predatory offenders being free to burrow into communities undetected and strike anonymously is inimical to public safety because of the threat of criminal acts. The laws were created to protect the public from the most heinous of crimes.

Their intent is evident by the stiff penalty for violation of the law, and the fact that the penalty continues to rise. Additionally, registration laws may help deter crimes. First, no one wants to register as a sex offender. Like jail or a criminal record, which can deter crime because of a fear of those consequences, criminals may fear having to register. The law also may serve to deter crime because offenders know they are being monitored, and thus are more likely to be caught if they break the law. A third cause of deterrence is that, where communities have been notified of the offender's presence, offenders are more readily accessible for locating and questioning by law enforcement. This can help prevent crimes the offender would commit if not monitored. Without notification, the public is prey to predators for a much longer period of time, which certainly threatens public safety.

C. The plain language and history of Minn. Stat. § 243.166, subd. 5, demonstrates that it is "criminal/prohibitory" for purposes of state jurisdiction under public law 280.

In order to properly apply the jurisdictional test established in *Cabazon* and *Stone,* it is necessary to understand the state's public policy regarding predatory offenders and the felony offense of failure to register as a predatory offender. Minn. Stat. § 243.166, subd. 5, and its registration requirements clearly address heightened public policy concerns of protecting the public from dangerous predators.

In 1991, Minnesota enacted its first sex offender registration law. *See* Minn. Laws 1991, ch. 285 § 3, codified at Minn. Stat. § 243.166. Prior to

the enactment of that law, the Governor's Task Force on Missing Children was commissioned by then Governor Rudy Perpich in July, 1990, in direct response to the abduction and kidnapping of Jacob Wetterling with the ultimate goal of benefiting all missing children. *See* 1991 Task Force Report, Appendix R, 5.[2]

The legislative history of the registration law also demonstrates the public safety concerns addressed by registration. Initially, the statute required persons convicted of certain enumerated felony offenses to register upon release from prison pursuant to the 1991 Task Force Report. Appendix R, 5. This law was amended in 1993 to require registration by persons charged with an enumerated felony offense and convicted of that offense or of another offense arising out of the same set of circumstances, pursuant to the Act of May 20, 1993, ch. 326, art. 10, §1, 1993 Minn. Laws 2090. This change stopped the use of plea negotiation to avoid registration. *Boutin v. LaFleur,* 591 N.W.2d 711, 714-715 (Minn. 1999).

A 1995 Task Force on Sexual Predators recommended further amendments and noted, "These measures will provide an added level of safety to the public by strengthening Minnesota's sex offender registration law . . . " Task Force on Sexual Predators, Final Report to the Legislature, Jan. 4, 1995 (1995 Task Force Report).[3]

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[2] "Appendix R" refers to the Appendix of Respondent's Brief in Opposition.

[3] The 1995 Task Force Report is part of the legislative history of the offender registration law, and a copy of it is reproduced in

After Donald Blom kidnapped and killed Katie Pourier, the legislature in 2000 made major changes to the statute. These included requiring reporting of all real property owned and all cars regularly driven by the offender. *See* Minn. Stat. § 243.166, subd. 4a (1-5) (2000). The Legislature also increased the severity of failure to register to a felony level offense, thus further emphasizing that failure to register is a serious crime which is completely prohibited in this state. *See Journal of the House*, 81st Leg. Session, 5569 (Minn. Feb. 3, 2000). The Senate sponsor described the felony penalty as "perhaps the most important" change in the statute and indicated that for public safety, Minnesota needed "a strong deterrent" against failing to maintain registration. (*See* statements of Senator Reichgott-Junge, *Senate Crime Prevention Committee*, Feb. 7, 2000 and Feb. 9, 2000.)?? In *Jones*, 729 N.W.2d at 7, the Minnesota Supreme Court concluded the legislative history of section 243.166 indicates a predatory offender residing or moving without maintaining a current address registration with the proper authorities presents a substantially different or heightened public policy concern when compared with Minnesota residents in general. The Court therefore concluded the narrow conduct of a predatory offender should be the focus under the *Cabazon/Stone* test. *Id.* at 8.

The Minnesota legislature has exercised its authority to target and to promote the effective investigation and enforcement of predatory crimes. This criminal conduct is particularly harmful to victims, prone to recidivism, and difficult to

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the Appendix of Respondent's Brief in Opposition at Appendix R, 33.

investigate. The purpose of Minn. Stat. § 243.166 is to create a database of prior predatory offenders to assist law enforcement investigation. (*See* Minn. Laws 1994, ch. 636, preamble.) The value of such data base increases if it becomes as complete as possible. The ability to criminally prosecute all offenders who fail to register or otherwise fail to comply with the statute is thus essential. Failure to register raises heightened public safety concerns, is strictly prohibited in this state, is contrary to the public policy against predatory behavior, and is therefore "criminal-prohibitory" for purposes of state criminal jurisdiction under Public Law 280.

D. Analyzing the failure to register under the shorthand test in *Stone* dictates the conduct is criminally prohibited and is consistent with *Cabazon*.

Under the *Cabazon/Stone,* when applying "shorthand test public policy test," the Minnesota Supreme Court considers four non exclusive factors in determining "whether an activity violates the state's public policy in a nature serious enough to be considered 'criminal.'" *Stone,* 572 N.W.2d at 730. The first issue is whether the conduct directly threatens physical harm, or invades the rights of others. The operative word is threatens. A predator failing to register, without anything else occurring, threatens the community because at that point he cannot be observed. It is important to note that this factor does not state that "should the conduct occur, physical harm is imminent." In order to violate public criminal policy, the law does not have to stop the individual from driving drunk; to violate public

criminal policy the law can stop the driver from driving at all because any driving by someone with the history of driving under the influence directly threatens public safety because of the increased likelihood the driver will drive drunk. The situation is similar in Jones, predators living unregistered directly threaten public safety because they are (at least have been deemed by legislature) more likely to commit predatory crimes than others, and the legislature has determined registration helps stop them.

The second factor in the shorthand test is to consider whether there are exceptions to the prohibition of the conduct in question. There are no exceptions statewide to the enforcement of predatory registration. The third factor is blameworthiness of the offender. Blameworthiness means the perpetrator knew what they are legally required to do, and did not do it. *State v. Johnson,* 598 N.W.2d 680, 689 (Minn. 1999). In *Jones,* 729 N.W.2d at 9, the Court concluded Jones was aware of the requirements of section 243.166 and knowingly refused to comply with those requirements, and therefore demonstrated a high level of blameworthiness in failing to maintain a current address registration.

The fourth factor is the penalty of the conduct. Failing to register as a predatory offender is a felony, and can be punished by being sent to prison for up to five years. *See* Minn. Stat. § 243.166.

E. Taking jurisdiction away from the states would make the state less safe, and should be avoided at all costs.

Taking jurisdiction away from the state on Indian Reservation would have the cumulative effect of making all communities, on and off the reservation, less safe. The inability to monitor predatory offenders on the reservation would create a break in the chain of registration; offenders could slip through the cracks of the monitoring system by moving onto a reservation, and then moving off. While the predatory offender would be under the state's jurisdiction once off the reservation, it would be difficult for authorities to enforce the requirement because they would not be able to track them when they were on the reservation. Also, pursuant to Minn. Stat. § 243.166, the general public is required to be informed of the location of highly ranked, dangerous sex offenders.

F. The United States Congress has granted power to the states to enforce predatory offender statutes.

Jacob Wetterling crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071, provided mandatory guidelines for Attorney Generals to adopt state registration programs for certain crimes. The act is the result of a national program to track certain predatory offenders. Section 14071 (d) – Penalty provides as follows:

> A person required to register under a state program established pursuant to this

> section who knowingly fails to so register and keep such registration current, shall be subject to criminal penalties in any state in which the person has so failed. (emphasis added).

It can certainly be argued that Congress intended a violation of State registration laws to be criminal in nature based on the plain meaning of Section 14071 (d). The State of Minnesota has adopted Minnesota Statute § 243.166 – Registration of Predatory Offenders in an effort to comply with the federal legislation. The Minn. Stat. § 243.155, subd. 5(a) provides for a maximum penalty of five years in prison and a $10,000 fine for violation of registration statutes. Taking jurisdiction away from the State on Indian Reservation would create a checkerboard effect of enforcement on Indian Reservations such as the Leech Lake Reservation. The Leech Lake Reservation is an open reservation, wherein both Indian and non-Indians reside. 25 U.S.C. § 1302 (7) of the United States Code only allows Indian tribes exercising the power of self-government to impose maximum penalties of up to one year in prison and a fine of $5,000 or both. It does not appear that barring passage of federal legislation, that Indian tribes could enforce penalties similar to the State's felony laws, even if it were so inclined to do so.

G. The Leech Lake Reservation Tribal Council has recognized that predatory offender registration statutes serve a strong public policy interest.

On November 21, 2005, the Leech Lake Reservation Tribal Council passed Resolution No. 2006-37, signed by the Chairman and Secretary/Treasurer of the Leech Lake Tribal Council. Appendix R, 4. The Resolution was duly presented and acted upon by a vote of three for, zero against, and one silent at a special meeting of the Leech Lake Tribal Council, quorum being present, held on November 21, 2005 at Cass Lake, Minnesota. Appendix R, 1. The resolution states as follows:

> BE IT FINALLY RESOLVED, the act of failing to register raises significant public safety concerns because it restricts the ability of law enforcement to track those persons whose prior convictions have conclusively established that they are dangerous to others.

Appendix-R, 3.

Although the Leech Lake Tribal Council exercised its tribal sovereignty in declaring that it viewed the predatory offender registration code as a criminal matter, the tribe effectively returned its jurisdiction back to the State. *The New Battleground for Public Law 280 Jurisdiction: Sex Offender Registration in Indian Country,* 101 Nw.U.L. Rev. 897, 926 (2007). This decision was motivated by the strong public safety threat posed by predatory offenders; the tribe's view that under Public Law 280

this matter should be under the State's jurisdiction; and the tribe lacked resources to effectively implement its own registration code. *Id.* Obviously, the Leech Lake Tribal Council recognizes the seriousness of having predatory offenders register with the State of Minnesota and wants the State to enforce its statutes on the reservation.

CONCLUSION

The Petition for Writ of Certiorari should not be granted as Petitioner has failed to establish any compelling reason for the Court to accept review. The Minnesota Supreme Court's decision in *Jones* does not conflict with U.S. Supreme Court decisions. The State of Minnesota has properly exercised its authority in requiring predatory offenders to register pursuant to Minnesota Statute §243.166.

Dated: November 21, 2007

Respectfully submitted,

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LEECH LAKE RESERVATION TRIBAL COUNCIL RESOLUTION NO. 2006-37

Mandatory Registration of Predatory Offenders in accordance with Minnesota Statutes §243.166 and §243.167.

WHEREAS, the Leech Lake Band of Chippewa Indians is a Federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934, and operating under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and

WHEREAS, the Leech Lake Reservation Tribal Council is the duly elected and authorized governing body of the Leech Lake Reservation pursuant to Article VI of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and WHEREAS, the Leech Lake Tribal Council is charged with the responsibility of protecting and advocating for the health and welfare of Leech Lake Band members within the Leech Lake Reservation boundaries; and

WHEREAS, the state of Minnesota requires predatory offenders to register under Minnesota statute §243.166 and §243.167; and

WHEREAS, the Minnesota Court of Appeals in State v. Jones (File No. K8-04-1154) declared that Minnesota Predatory Offender Registration statute §243.166 is civil regulatory in nature and therefore the state of Minnesota does not have jurisdiction to apply the statute to Native American tribal members residing on an Indian reservation; and

WHEREAS, the Minnesota Predatory Offender Registration Statute serves a strong public policy

interest by monitoring predator offenders through mandatory registration; and

WHEREAS, it is vital to the safety of tribal members residing within the boundaries of the Leech Lake Reservation and vital to all residents who reside in the surrounding communities on or near the Leech Lake Reservation to have a uniform mandatory predatory offender registration statute to assist law enforcement in identifying possible suspects in murder, criminal sexual conduct and kidnapping cases and providing notification to the public concerning where level 3 offenders will be residing in the community; and

WHEREAS, the Leech Lake Band of Ojibwe Tribal Court is currently set up to handle various family law cases, conservation code violations and civil regulatory cases without the current capability of handing down jail sentences, also due to limitations imposed by federal law under the Indian Civil Rights Act of 1968; codified at 25 U.S.C. 1301-1303 (limiting maximum penalties which tribal courts may impose to 1 year in jail and a $5000 fine); and

WHEREAS, predatory offenders who are required to register under the Minnesota Predatory Offender Statute who knowingly violate any of its provisions or intentionally provide false information to a corrections agent, law enforcement authority, or the Bureau of Criminal Apprehension are subject to a felony conviction and may be sentenced to imprisonment for not more than 5 years or to payment of a fine of not more than $10,000, or both; and

WHEREAS, it is the belief of the Leech Lake Tribal Council that the Leech Lake Reservation communities would be better served by having felony level consequences for violation of the predatory offender registration statutes as opposed to petty misdemeanor consequences;

NOW THEREFORE BE IT RESOLVED, in order to better serve and protect Leech Lake Reservation communities, all Minnesota Chippewa Tribe members who reside within the Leech Lake Reservation boundaries and who would be subject to Minnesota's mandatory predatory offender registration statutes if they lived off the Reservation are hereby required to register with the state of Minnesota and further required to comply completely with Minnesota statutes §243.166 and §243.167.

BE IT FINALLY RESOLVED, the act of failing to register raises significant public safety concerns because it restricts the ability of law enforcement to track those persons whose prior convictions have conclusively established that they are dangerous to others. Accordingly, failure to comply with Minnesota Statutes §243.166 and §243.167 will result in felony prosecution in state court under the State of Minnesota's Public Law 280 criminal/prohibitory jurisdiction.

WE DO HEREBY CERTIFY that the foregoing Resolution was duly presented and acted upon by a vote of 3 for 0 against 1 silent at a Special Meeting of the Leech Lake Tribal Council, quorum being present, held on November 21, 2005 at Cass Lake, Minnesota.

s/_____
George Goggleye, Jr,, Chairman
LEECH LAKE TRIBAL COUNCIL

s/_____
Arthur LaRose, Secretary/Treasurer
LEECH LAKE TRIBAL COUNCIL

GOVERNOR'S TASK FORCE

ON MISSING CHILDREN

Final Report
March 12, 1991

TABLE OF CONTENTS

1. INTRODUCTION

2. Non-family Member Abduction Subcommittee.
   Report ..... Page 4
   Recommendations ..... Page 7
3. Parental Abduction Subcommittee.
   Report ..... Page 8
   Recommendations ..... Page 11
4. Runaway - Throwaway Children Subcommittee.
   Report ..... Page 12
   Recommendations ..... Page 14
5. Public Education - Information Subcommittee.
   Report ..... Page 16
   Recommendations ..... Page 17
6. System Needs Subcommittee.
   Report..... Page 18
   Recommendations ..... Page 20
7. Summary ..... Page 21
8. Task Force Members ..... Page 23

INTRODUCTION

In July 1990, then Governor Rudy Perpich commissioned 27 Minnesota citizens as members of a Task Force on Missing Children. It was formed in direct response to the kidnapping of Jacob Wetterling with the ultimate goal of benefiting all missing children. They were charged to deal with issues

related to Minnesota children who are, were, or potentially could be missing from their homes. By February 15, this Task Force was to draft recommendations and present them to the Governor in the form of a report.

The Task Force members selected represent a variety of agencies and perspectives and collectively brought a broad base of knowledge to the task. Task Force members represent human service agencies, education; law enforcement, social service agencies, special projects which deal with missing youth, criminal justice, the arts, the religious community, parents with missing children and concerned citizens. Names and addresses are included in this report.

Due to the diversity of issues, the Task Force formed into 5 subcommittees. The topics they dealt with were non-family abduction, parental abduction, runaways and throwaways, public education/information and system needs. Each subcommittee was instructed to set forth two (2) recommendations which would be brought to the committee at large and subsequently become a part of the report to the Governor.

The categories of children addressed within the responsibility of this committee and the issues of such magnitude that each committee found it impossible to stay within the guidelines of two (2) recommendations. Each committee, therefore, selected those recommendations which have the potential for preventing children from becoming victims and which deal with the issues involved when children are reported missing.

These subcommittee recommendations comprise the major body of this report. Each subcommittee's recommendations are those of the

members of the committee listed within that report. The content of each report was presented to the Task Force at large and is acknowledged as addressing the major issues within that subcommittee's area of responsibility.

NON-FAMILY MEMBER ABDUCTION SUB-COMMITTEE

According to a study conducted in mid-1990 by Dr. Gunnar Stickler, an emeritus pediatrician with the Mayo Clinic in Rochester, when asked "What are the greatest perceived risks of parents regarding their children?" - 72% responded with the fear that their child will be kidnapped by a stranger. Although this is the smallest portion of "missing" children, it is the most threatening to the child and the most feared by the parent.

Our subcommittee looked at different states' legislative changes and conclusions of their studies, at the Selected State Legislation Guide Book from the National Center for Missing and Exploited Children at the National Incidence Study of Missing, Abducted, Runaway, and Throwaway Children (NISMART) and realized that although we hear about abductions only occasionally in Minnesota, every region of the country is experiencing the same thing. This is a major national problem that is, in large part, going unsolved.

Our subcommittee learned citizens are concerned and outraged about the abduction of Jacob Wetterling, but there is a great need to pay attention to the less publicized, far more frequent sexual violations against children. There are a very large number of "stranger" abductions that are short term and involve taking children for the purpose of sexual

molestation or victimization. The legal definition of Non-Family Abduction used in the NISMART Summary meant:

> "the coerced and unauthorized taking of a child into a building, a vehicle, or a distance of more than 20 feet; the detention of a child for a period of more than an hour; or the luring of a child for the purposes of committing another crime."

While Minnesota statute does not specifically define non-family abduction, it is included within statute 609.25; subdivision 1. Acts Constituting, which states:

> Whoever, for any of the following purposes, confines or removes from one place to another, any person without the person's consent or, if the person is under the age of 16 years, without the consent of the person's parents or other legal custodian is guilty of kidnapping and may be sentences as provided in subdivision 2:
>
> (1) To hold for ransom or reward for release, or as shield or hostage; or
> (2) To facilitate commission of any felony or flight thereafter, or
> (3) To commit great bodily harm or to terrorize the victim or another; or
> (4) To hold in involuntary servitude.

And in 609.25; Subdivision 2. Sentence, which states:

> Whoever violates subdivision 1 may be sentenced as follows:
>
> (1) If the victim is released in a safe

> place without great bodily harm, to imprisonment for not more than 20 years or to payment of a fine of not more than $35,000, or both; or
> (2) If the victim is not released in a safe place or if the victim suffers great bodily harm during the course of the kidnapping to imprisonment for not more than 40 years or to payment of a fine of not more than $50,000, or both.

When a child is abducted, molested and released, which is usually the case, it is often recorded as a molestation, although the crime is based on the abduction. Research from the Kevin Collins Foundation shows that it's child molesters who abduct children. The NISMART Summary states that two-thirds or more of abductions which met the legal definition involved sexual assault and over 85 percent involved force. Most child molesters were themselves victims of the same sort of treatment. However, it must be noted that not all molested children become child molesters. Growing up, molesters often started by fondling children in or around the family. The U.S. Advisory Board on Child Abuse and Neglect reported in June, 1990 that there were 900,000 substantiated cases of child abuse and neglect in 1989.The majority of these crimes were reportedly perpetrated against these children by members of their own households.

Research has demonstrated that sex offenders are repetitive and compulsive. Research also demonstrates that child sex offenders will continue their abuses for years and rarely are "cured." The

primary goal of treatment focuses on teaching offenders to control their impulses.

Studies show we need to break the cycle of child molesting. This has to start by acknowledging how big the problem is. We all agree that it's never O.K. to molest a child - not your own, not your neighbor's, not any child.

According to the 1988 NISMART Executive Summary, abductions by non-family members reported to police ranged as high as 4,600 per year, with many more unreported, and 114,600 children reported abduction attempts which were successfully thwarted. The FBI Journal states that "like rape, child molestation is one of the most under reported crimes, and virtually every study...acknowledged that only 1 to 10 percent of the incidents are ever disclosed."

Most abductions are short term. The child is most often molested then released. Often the family feels shame (though undeserved) and believes the child has suffered enough, hence, does not report the crime. It is critical that efforts toward elevating public awareness are increased, informing people of the importance of reporting instances of child molestation and or abduction. Our subcommittee's recommendations began to focus on a centralized system of reporting this information and tracking the child molester.

Ernie Allen from the National Center for Missing and Exploited Children points to California as having a good model for registration of sex offenders. We met with Senate Counsel to see how we can most effectively adapt their system in Minnesota. The main change we would propose is the establishment of a violent crime center. This center

would expand on existing Bureau of Criminal Apprehension (BCA) efforts and would contain an investigative support unit and a system to facilitate the identification and apprehension of persons responsible for murder, kidnap, including parental abduction, false imprisonment or sexual assault.

Sex offenders typically have a high rate of recidivism. For investigatory and safety reasons, law enforcement agencies must know where sex offenders reside. Currently in Minnesota, "When the sex offender is discharged from supervised release or probation, the probation officer shall inform all law enforcement agencies notified under this section. Every agency shall then destroy the data." (Section 243.165 NOTICE OF SEX OFFENDERS ADDRESS Subd. 3.)

Our subcommittee would like to see mandatory treatment for sex offenders. Since sex offenders are routinely returned back to the streets, treatment may provide them with the opportunity to change their behavior. Treatment, especially in the case of the young offender, may play a useful role in attempts to break the cycle of child molesting. One fact cannot be ignored; the problem of child physical and sexual abuse is costing our country. 90% of convicted felons, 75% of adolescent prostitutes and 70% of adolescent drug users report that they were victims of physical and/or sexual abuse as children.

There is a need for additional study regarding record checks on students who are new to a school district. This study should investigate the feasibility of checking for AR-12 proper identification, as well as verification that new students are with their proper parent or guardian. It would also be fairly simple to flag the school records of a child who is currently, or

was previously, enrolled upon notification that a child has been reported missing.

There is a need to develop programs which seek offender resources to pay for counseling and treatment for children who are victims of sexual abuse and exploitation.

Upon pulling together many resources for this Governor's Task Force, our subcommittee quickly became aware of many complications in seeking solutions. Our children could benefit from further study into the dangers facing them today. We recognize the need for public education and awareness about the very large problem of child molestation and exploitation. These programs often trigger children to report their own stories of victimization. All children are at risk of being sexually molested, assaulted or abducted. Minnesota legislators must pay attention to the loud voices calling for change in priorities with regard to our children. These recommendations will create a safer world for all our children.

When asked about child molesting, pornography and prostitution, a law enforcement official said, "The only way not to find this problem in your community is to not look." Statistics show that for Jacob and all the other children at risk, we can no longer afford to look the other way.

SUBCOMMITTEE MEMBERS: Petty Wetterling, Chair; David Baraga, St. Sen. Joe Bertram, Sr., Marcia Cummings, Kim Frank, Sheriff Jim Kostraba, Marc McMullen, Rosanna Walker

RECOMMENDATIONS

1. Registration of convicted sex offenders.
2. Establishment of a Violent Crime Center.
3. Time limit of 4 hours in which law enforcement agencies submit their reports to the Violent Crime Center.
4. The BCA should provide training about the use of the Violent Crime Center to appropriate agencies.
5. Change the sentencing guidelines so that there is imprisonment after 2 convictions of 2nd degree sexual assault instead of 3 convictions.
6. Mandatory treatment for sex offenders.

FURTHER STUDY IS NEEDED IN THE FOLLOWING AREAS:

1. Checking school records and flagging students.
2. "Child Victim's Bill of Rights" as suggested by the National Center for Missing and Exploited Children.
3. The disproportionate victimization of disadvantaged youth.
4. Pornography Issues

SOURCES

1) National Incidence Study of Missing, Abducted, Runaway, and Throwaway Children (NISMART)

2) "Help Us Find Abducted Children" The Kevin Collins Foundation 1990

3) "Help Us Find Abducted Children."

4) "An abducted child tells how he could have been found" The Kevin Collins Foundation

5) Project Charlie's Safe Program - A program of Storefront Youth Action, Edina, Minnesota 1989

6) Keynote address Transcript - Ernest E. Allen, President The National Center Missing and Exploited Children November 10, 1990 - St. Cloud Civic Center

7) Task Force on Community Protection - Final Report to Booth Gardner, Governor State of Washington

8) Task Force on Community Protection

9) Project Charlie's Safe Program - A program of Storefront Youth Action, Edina, Minnesota, 1989

10) Project Charlie's Safe Program

PARENTAL ADDUCTION

Each year an estimated 354,000 children are abducted by one parent from the custody of the other parent. In the typical child kidnapping case, a noncustodial parent abducts the child from the custodial parent, often with the aid of relatives. Informal surveys have suggested that abducting parents are emotionally unstable at the time of the abduction. These parents also demonstrate a history of violent or abusive behavior, having abused their spouse or children in the past. Thus, an abduction places the entire family in a situation which, short of the death or life threatening illness of a child, is among the most disruptive of family events.

For the child, "life on the run" can become a constant refrain of moving from one location to the next, avoiding close ties with anyone and being fed distortions about the other parent. According to data from Missing Children Minnesota, many child victims who have been recovered were physically, sexually and/or emotionally abused while in hiding.

Minnesota Statute 609.26 makes parental

kidnapping, including both child abduction and concealment, a felony. The statute also provides that, at the discretion of the court, the cost of returning the child to the custodial parent may be allocated to the abductor. It allows as a defense that the abducting parent or concealer reasonably believes the child to be in physical danger while in the custody of the other parent.

While the law provides a criminal penalty for parental abduction, the speedy return of the child is more likely to be affected by the right of the custodial parent to pursue a civil cause of action. This would allow the parent who has the right of custody, control and services of a child to maintain an action for damages against ANYONE who actually or allegedly assisted the noncustodial parent in abducting or concealing a child (or children) from the custodial parent.

Since the sooner an ambitious search is begun, the better the chances of recovery, it is important that statute provide for a speedy search. The current language in the statute says that a child may be missing for fourteen (14) days before a search is begun, many law enforcement agencies will not seriously become involved in a parental abduction case for two (2) weeks. This time needs to be shortened to affect the return of children to their custodial parent.

The defense that is currently available to the abducting parent provides them with the opportunity to exploit the system. A requirement needs to be added so that the abducting parent has, on file, a statement that they have reason to be concerned for the safety of the child (or children) while they are in the care of the custodial parent.

Subcommittee members: Marge Romero, Chair: Carol Watson, Colleen Lloyd.

RECOMMENDATIONS

1. Right of the custodial parent to take civil action against anyone who abducts, conceals or assists in the abduction or concealment of the child (or children).
2. Change "14 day" language, as length of time before search must be instigated, in Statute 609.26 to three (3) days.
3. Require abducting parent to have on record with a child protection agency that he/she believes child is in physical danger in care of custodial parent if he/she is going to use a portion of this statute as a defense.
4. Statewide law enforcement agencies treat parental abduction cases as the felony crimes that they are and that county attorneys prosecute the cases.

RUNAWAY AND/OR THROWAWAY CHILDREN

A child runs away from home every twenty six seconds in the United States. Research compiled by the U.S. Department of Justice Studies estimates that there are at least 700,000 to 1,000,000 runaway and/or throwaway children in America, half of which go unreported to authorities. The Minnesota Department of Human Services reports Minnesota ranks fourth in the nation as having the most homeless youth. Its estimate is that there are up to 1,000 runaway and/or throwaway children on the street of Minneapolis and St. Paul on any given night. Youth workers and numerous studies report that in a majority of cases, family conflict or violence

precipitated a youth's decision to run away from home.

Although studies reviewed indicate that Minnesota has funded crisis intervention efforts in the past, early intervention efforts that could have prevented a major part of this problem are virtually non-existent and those that are attempted are inadequate and, often, inappropriate. It is important that the legislature make isolating and treating the causal factors of runaway and/or throwaway youth a priority, if these children are to become productive, functional members of our future society.

Throwaway children are defined as those who:

1) are asked to leave home;
2) leave and are told not to return home;
3) after they leave are not looked for by parents or guardians;
4) are deserted or abandoned.

There are approximately 127,000 throwaway children nationwide, according to estimates by the Department of Justice. While throwaways consist predominately of older teens from low income families, a disproportionate number of those who are deserted or abandoned throughout the U.S. are under age four (4). Professionals within the Task Force related these findings are also reflective of the current situation in Minnesota.

From January to September 1990, 7,604 children were entered in the Minnesota Crime Information System (MINCIS) as runaway youth. Those missing under suspicious circumstances, lost, throwaway, suspected victims of child abuse, sexual abuse or parental abduction cases are not classified, as such. Total numbers of runaway cases not cleared

by cancellation, voluntary return, arrest or for other reasons as of September 1990, in MINCIS, is 2,725. 1,627 of these youths have not been heard from in over one year.

While it is generally accepted that runaways are disadvantaged youth, workers with Project Off streets report that the children they serve are from all racial, ethnic and socioeconomic backgrounds. However, a large number of these youths come from stepparent families or have run away from system or institutional care such as foster homes, shelters or group homes. In comparison to runaways, throwaways report experiencing a higher degree of family conflict and have been victims of, or witness to, more violence in their home environment.

Studies of the lives of abusers, report that at least one third of them have been physically and sexually abused as children. Many others suffer from neglect throughout their early lives. Society has not treated these children well, with commonly held beliefs that the child's own actions brought on the situation, that they came from bad families or that they themselves were willful, bad children. If the children are of color, they are held in even less regard by society.

All children must get the message that they have a right to live free from abuse and that there are people who will provide them with help, if they will ask for it. The serious core issues of abuse and neglect experienced by throwaways and/or runaways will have long term implications not only for these children but, if not dealt with, will have a far reaching, extensive impact on society.

Public education needs to sensitize society to the plight of runaway/throwaway youth. These

messages need to be stated in clear, concise language on topics such as child abuse and neglect, alcoholism, effective parenting, and discipline. This should include educational policy at the district level and provide age appropriate information about physical, sexual and mental abuse to students. Teachers and other staff members would need to be trained in child abuse prevention curriculum and updated on reporting laws.

There need to be disincentives to those who take advantage of runaway and throwaway youth and a variety of services available for youth who are in crisis. This involves increasing the penalty under current Criminal Code 609.322, Subdivision, Solicitation Inducement and Promotion of Prostitution, Individuals Aged 16-18 from a five (5) year felony to a ten (10) year felony. Law enforcement policy on the investigation of reported runaways/throwaways needs to be standardized statewide and federal legislators should be lobbied to introduce legislation mandating uniformity in laws pertaining to these children.

Providing a resolution to the problem of runaways and throwaways involves intervention at the preventative (to keep situations from occurring), secondary (to keep current situations from recurring), and tertiary (to intervene to resolve the situation).
Subcommittee Members: Colleen Lloyd, Chair; Pat Gharrity, Tom Gray, Don LeTourneau, Ed McBrayer, Marge Romero.

RECOMMENDATIONS

1) Develop a massive public education campaign emphasizing helping, saving and protecting our children.

2) Change Minnesota Criminal Code 609.322, subdivision 2, "Solicitation Inducement and Promotion of Prostitution, Individuals Aged 16-18..." to increase penalty to a 10 year felony.

3) Formalize policy at the district level to teach age appropriate, nonthreatening material about physical, sexual and mental abuse, communication and family living skills and chemical dependency with training for educators in child abuse prevention.

4) Develop a 24 hour hotline for youth in crisis to call for counseling and resources.

5) Standardize law enforcement policy on the investigation of cases of runaways/throwaways with emphasis on increased interaction between law enforcement and social service agencies.

6) Differentiate problems of runaways and throwaways from those of other missing child in policy, research and publications throughout the state.

7) Focus on the problem of children who run from institutions and other forms of system care, since they are among the most chronic of runaways and at the highest risk of becoming crime victims and/or crime perpetrators.

8) Develop an interdisciplinary approach between the agencies identifying, intervening and treating the problems of families of throwaways and runaways.

9) Establish group home settings for high-risk youth, such as minor AFDC recipients and adolescent prostitutes, and specialized therapeutic foster home, for runaway and throwaway youth.

10) Authorize funding to provide family intervention services for agencies with programs designed to encourage usage by runaway and

throwaway youth and to providers of shelter, food, counseling, medical screening and care, vocational and, educational programs to runaway/throwaway youth.

11) Provide incentives for long term stabilization planning for family reunification or independent living for youth who are runaways and throwaways.

PUBLIC EDUCATION/INFORMATION

There are a variety of issues involved in educating and informing the public concerning missing children. These involved fiscal resources, prevention curriculum, the opposition to curriculum, ownership of the problem, society's concern for the welfare of all children, family life education, living skills education, communication between prevention programs, citizenship and self esteem.

Most success will result from providing strong prevention programs which present balanced information and promote empowerment and self esteem. These programs will be available to children, educators, parents and community members.

School based programs which involve the community in their efforts, particularly parents and members of religious communities, should be encouraged. An example of one such program is the Maxine Waters Child Abuse Prevention Training Act of California. Public service announcements should elevate public awareness of the missing children problem and the prevention efforts that are successful.

The goal of prevention programs should be to keep offenses from occurring and recurring by working with potential and actual victims as well as potential and actual offenders. Minnesota currently has a variety of programs which have had varying

degrees of success. Programs which have proven their success should be strengthened and expanded, such as the Children's Trust Fund.

The Governor should appoint a permanent task force to identify community-based groups involved in prevention and network them with other groups. This group should also investigate funding sources and provide this information to the prevention groups.

Subcommittee Members: Nancy Riestenberg, Chair Dianne Brieeun, Janis Fuller, Denise Revels-Robinson, John Vackel.

RECOMMENDATION

1) Strengthen and expand the Children's Trust Fund by increasing funding to maintain and support current programs and services. Funding could also be used to develop and expand these services

2) Expand current prevention/education efforts (e.g. public service announcements) that include a focus on state and local services currently available.

3) Encourage the development of public service announcements concerning missing children which would also include and address societal and cultural attitudes regarding children and violence.

4) Promote and fund school curricula, public service announcements, etc., that advocate alternative parental disciplinary behavior in general and specific non-violent parenting skills.

5) Establish prevention/education programs in schools where none exist and assist with the development of training tools and materials.

6) Support and encourage the dissemination of related information through existing resources (e.g.

radio, newspapers, television) which serve communities of color using language and culturally appropriate materials.

7) Disseminate information on missing and exploited
children to all existing programs and encourage them to incorporate this information as part of their ongoing educational efforts.

8) Establish a permanent Task Force to identify, network and coordinate community-based prevention groups and assist them in finding resources to extend their efforts. The Children's Trust Fund could be expanded to fulfill this need as could the Minnesota Missing Children's Center (see recommendation #3).

SYSTEM NEEDS

Since the members of the Task Force came from diversified backgrounds and had been involved in the problems associated with missing children both personally and professionally for many years, the system(s) needs became identified through their collective experiences. These individuals related that calling attention to the extent of the problem; educating the public, including specific training for various targeted agencies and individuals; and impacting the services provided by the ECA are ways in which the system can be impacted.

The greatest impact upon systems, initially, would be through educating the public and agency personnel. Task Force members related that at present there is little done by most agencies to train their personnel in dealing with issues related to missing children. Even those agencies providing services to children and their families on a daily basis have no training sessions. In many agencies, the

basic information on prevention strategies, sensitivity to families needs, differentiation between categories of missing children, and other issues is not presented effectively or, in many cases, is not presented at all.

There is a need for information and training for all personnel involved in any aspect of missing children, including those who come in contact with young children on a regular basis (preventive), those who search for and/or work with targeted (at risk) or runaway/throwaway youth (secondary), and those who deal with the many problems of missing children and their families (tertiary), as well as parents and community members. This information should be broad based to encompass the varied problems and issues involved in the overall category of missing children.

Key agencies to target would be law enforcement, education, criminal justice and social services. The training for law enforcement should be a part of the 48 hours which each law enforcement officer is required to take every three years. School personnel should receive training in how to handle situations when a child says he/she is not with his/her "right" parent, demonstrates evidence of abuse, or in subtle ways asks for help. This will require information on the law and legal and personal responsibility.

Information should be provided to criminal justice system personnel on personal issues and problems related to child abduction and missing children. Those providing services to individuals and families, such as social workers, doctors, psychologists and counselors, should be trained to recognize the problems of families going through the trauma of searching for their child and the aftermath

of the child's return.

Except for children taken by strangers, little attention is focused on other kind of missing children. Strategies must be developed and employed that will continue to keep the public aware of the many categories of missing children and the problems realized by those missing youth and their families. Agency personnel must also receive updated information on a regular basis. They, in turn, should be required to pass on this information to those they serve, namely parents and children.

A coordination of services, including training and educational programs, and the identification of resources, with locations and the way to access them, will ensure that services are accessed by those who need them. This must be the responsibility of an agency and specific individuals within that agency. To widely distribute this information, a directory of services and regular publications by the coordinating agency should be developed. Other methods for presenting information, such as Public Service Announcements (PSAs), newspaper articles and ads, and billboards could be developed and coordinated by this agency. Since accurate statistics are not currently available, mandatory reporting by all law enforcement agencies should be required. Compilation of this data could be another function of the coordinating agency.

The Governor should declare one week in 1991 Missing Children's Week. During that week one day should be set aside for a resource fair at the Capitol. The Governor should also send message to law enforcement agencies to be read at roll calls during that week. As the kick-off to the week, he could hold a news conference informing the public about the

issues and the activities that will occur during that week.

One of the problems with identifying missing children is that while physical descriptions of them are currently listed within the BCA data base, information on them can only be accessed through their birth date, real name or social security number. The difficulty in obtaining this information, particularly on young children who do not know these things about themselves, means it could take weeks to check out a report on a potentially abducted child. By then he or she may no longer be in the area of the sighting. Expanding the BCA data base to be accessed by physical descriptions would assist in the searching and retrieving of information which will enable agencies to find these children sooner.

Subcommittee Members: Carol Watson, Chair; Dixie Waller Anderson, Donna Anderson, Nancy Hite, Christine Koch, Sue Pagnac, Sr., Marge Romero

RECOMMENDATIONS

1) A Missing Children's' Awareness Week should be declared in 1991, which will include a residence fair , PSA campaign, readings of information during law enforcement roll call, and a variety of coordinated activities statewide.

2) Law Enforcement Officers" recertification training should require that eight (8) hours, out of the required 48 hours every three years, be in the area of victims' rights and child victim issues.

3) Two (2) new positions be created at the Minnesota Missing Children Clearinghouse at the BCA; (1) a coordinator for training and educational programs and (2) a victim services advocate and

resources coordinator, who would also be in charge of publishing a quarterly bulletin.

4) Files within the SCA database should be accessible by physical description of the child.

SUMMARY

This report from the Task force on Missing Children conclusively shows the need for immediate action in a range of areas in order to begin the process of addressing issues regarding missing children. After nine months of research, it became very clear to Task Force members that even if all recommendations in this report were to be adopted, that progress, while significant, would still be only the first steps necessary in coming to grips with the problems we and our children now face.

The Task Force identified five key areas related to the missing children problem. The categories include non-family abduction, parental abduction, runaway and throwaway children, public information and education, and system needs. Subcommittees studied each of these areas in producing a report and recommendations. The recommendations, in no particular order of priority, include

> registration of, and mandatory treatment for, convicted sex offenders.

> establishing a Violent Crime Center.

> granting custodial parents the right to take civil action against anyone who abducts or assists in the abduction of their children.

> require law enforcement agencies to begin an immediate search when a child is reported missing.

> step up investigative and prosecutorial

efforts in parental abduction cases to reflect the crime's felony status.

> develop a massive public education campaign to prevent parental abuse which is a major factor in cases of runaway and throwaway children.

> increase criminal penalties for inducing 16-to-18year-olds
involvement in prostitution.

> strengthen and expand the Children's Trust Fund.

> establish prevention education programs in schools.

> institute a Missing Children's Awareness Week.

> require law enforcement recertification training programs dedicate time to the study of victims' rights and child victim issues.

> files on missing children within the Bureau of Criminal Apprehension must become accessible by the physical description of the child.

In addition, the Task Force identified but was unable to address another area of major concern. In researching other areas, it became very apparent that communities of color have their own unique problems regarding missing children. The Task Force believes these communities are an under-served population that would immensely benefit from specific culturally sensitive programs and urges further action in this area.

The Task Force stresses that this Report is not a definitive work, rather it is a first attempt to address the most serious and identifiable aspects of

the missing children dilemma. In fact, there is a general consensus among Task Force members that some sort of permanent, on-going commission be created to continue critic al work in this area. There is much that remains to be done.

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TASK FORCE ON SEXUAL PREDATORS

Final Report to the Minnesota Legislature January 4, 1995

CREATION AND CHARGE

The Task Force on Sexual Predators was created by the 1994 legislature to "examine current law a n d practice relating to the commitment of psychopathic personalities...and...make recommendations on options, both civil and criminal, for dealing with sexual predators."[1]

The Task. Force was created in response to litigation questioning the constitutionality of Minnesota's psychopathic personality commitment statute.[2]

MEMBERSHIP

The Task Force was made up of a wide range of professionals familiar with the psychopathic personality statute, sex offenders, and the impact sexual assault has on victims. The 13-member task force included representatives of prosecutors, legislators, law enforcement, the Corrections and Human Services Departments, and various mental health professionals.[3]

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[1] Laws of Minnesota for 1994, Chapter 636, Article 8, section 20. See appendix one.

[2] Minnesota Statutes 1992, Chapter 526. See appendix two.

[3] See appendix three fora complete list of the Task Force's membership.

MEETINGS

The Task Force met 13 times to gather information, seek input from a broad spectrum of individuals, and to formulate its recommendations.

It held over 44 hours of hearings and heard from 50 witnesses including the legislative auditor's office, prosecutors, psychologists, defense lawyers, judges, probation/community supervision professionals, law enforcement officers, victims, treatment professionals, corrections representatives, sentencing experts, and Minnesota's Attorney General and Governor. In addition, the Task Force toured the St. Peter Security Hospital, and the Bureau of Criminal Apprehension.

RECOMMENDATIONS

Based upon the input they received and their own personal expertise, the-Task Force made the following recommendations:

> First, in its interim report the task force recommended that if the legislature was called into special session to address the civil commitment of psychopathic personalities, it enact into law bill draft SC3526-4.[4] This bill was enacted by the legislature in substantially the same form as proposed by the Task Force. It was enacted during a special legislative session held on August 31, 1994.
>
> Second, the Task Force further recommends modification of. Minnesota's criminal sanctions by the enactment of legislation substantially

[4] See appendix four.

similar to bill draft ES33.[5]5 This bill proposes to make three changes to the patterned sex offender sentencing law:

a) It would lengthen the maximum sentence allowed under the law to forty years. Under current law, the maximum sentence allowed under the law is limited by the statutory maximum sentence provided for. the offense of conviction —as low as five years for some offenses covered by the law.

b) It would require that a patterned sex offender be placed on conditional release for the rest of his or her life after being released from state prison. Under current law, the conditional release term lasts for the greater often years or the time remaining in the statutory maximum sentence. Crimes or other release violations committed during the conditional release term- could result in the offender going back to prison for life.

c) It would expand the scope of the law to. cover persons who plan or premeditate their predatory sex crime. Current law is limited to repeat offenders and to offenders who commit particularly aggravated sexually motivated crimes.

The Sentencing Guidelines Commission and/or the legislature should also continue to review Minnesota's criminal sexual conduct statutes to

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[5] See appendix five.

ensure that the length of sentences that are imposed are appropriate given the crimes committed.

Bill draft ES33 contains not only changes in Minnesota's criminal law, but also recommends training for judges and others on Minnesota's sentencing statutes that are applicable to persons convicted of sex offenses. In the past, the courts have suggested that the legislature should look at strengthening Minnesota's criminal sexual conduct sanctions.

However, the courts themselves have not always made the best use of existing: sentencing options. For example, the Task Force heard testimony that the downward departure rate by judges for criminal sexual conduct offenses was 40% Not all of these departures appeared warranted. Consequently, it is believed that training for the judicial branch on Minnesota's criminal sexual conduct sentencing laws would be worthwhile. Some reflection on the part of the judicial branch as to its sentencing practiced may be beneficial.

Third, the Task Force further recommends the enactment of legislation that provides for public notification when certain high risk sex offenders are released into a community, if the notification will result in increased public safety.

If the state fails within three years to enact a public notification provision, it will lose 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 (approximately $782,100).

However, the Task Force strongly believes that any such legislation must balance other competing interests with the public's right to know. With that

goal in mind, the Task Force recommends that any public notification legislation meet several guidelines:

a) Those offenders who fall within the scope of the public notification law should include certain offenders who have been committed to the Commissioner of Corrections and determined to be public risk monitoring cases. The task force could not reach a consensus on whether other offenders who are not committed to the Commissioner of Corrections should also fall within the' scope of the legislation.

b) An exemption to the notification law should be made whenever an offender is placed or resides in a facility that provides 24 hour supervision of the individual or the facility can account for his/her whereabouts on a 24 hour basis. This exemption should be granted only to those facilities whose staff have received training in sex offender super-vision.

c) Standards must be delineated in the legislation so that the scope of the disclosure to the public corresponds to the degree of risk a violator poses. For example, for some offenders limited disclosure to school officials may be warranted. For others, a more general, widespread community notification may be appropriate. Law enforcement and other officials charged with notifying the public will need these guidelines to assist them in determining how, when, and by what

method the public disclosure should be made. These guidelines will also ensure that there is a consistent enforcement of the disclosure law by law enforcement agencies. Individual agencies should not be allowed to develop their own standards for disclosure, thereby creating the possibility for the inequitable application of the law.

Fourth, the Task Force further recommends the enactment of bill draft KC4,[6] which modifies Minnesota's law related to the testing of sex offenders for the human immunodeficiency virus. Currently, the state is losing 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 ($782,100) because the law does not require the sentencing court to take the action specified in the statute. Federal authorities are also requiring the statute to be amended to make the factors that trigger the court order disjunctive rather than conjunctive as presently written.

Fifth, the Task Force further recommends that the money, which will be obtained as a result of the enactment of their fourth recommendation, be used to update computer capability and staffing levels within the Criminal Assessment Program (CAP) of the Bureau of Criminal Apprehension (BCA) as outlined in appendix seven.[7]

Presently, the sex offender registration database, the Minnesota Sex Crimes Analysis Program (MNSCAP), the photo retrieval database and other CAP

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[6] See appendix six.

[7] See appendix seven.

databases are not integrated into a unified computer system. This lack of integration makes data entry and retrieval procedures duplicative and cumbersome. For example, the physical characteristics of offenders are entered separately into the sex offender registration database, the photo retrieval database, the MNSCAP database and depending upon the nature of the crime, the Violent Criminal Apprehension Program (VICAP) database. This duplicative process results in wasted staff time that could be better used actually analyzing the data as opposed to merely "handling" it.

To the extent that the Task Force's fourth recommendation is not sufficient to provide enough money to fund this recommendation, it recommends that an additional general fund, appropriation be made to make up the difference.

Sixth, the Task Force further recommends that any money obtained as a result of the enactment of their fourth recommendation that is not used t o enhance the computer capability of the Criminal Assessment Program in the BCA be used to enhance DNA analysis methods within the Forensic Science Laboratory of the BCA. Additional money should be appropriated as needed to establish a complete polymerase chain reaction (PCR) testing program including purchasing the necessary equipment and supplies; conducting needed training; and remodeling existing lab facilities.

PCR technology will reduce testing time and enable tests to be conducted on smaller and poorer quality samples. Consequently, more cases will be able to be analyzed and more suspects positively identified. In

addition, more innocent persons will be exonerated and have their names cleared earlier. As a result, police departments will see financial savings since they will be better able to focus their investigations more narrowly and accurately. In short, justice will be better served. Seventh, the Task Force further recommends that the governor and the legislature develop a plan for the community placement and supervision of sexual psychopathic personalities and sexually dangerous persons who are provisionally discharged from civil commitment.

At present, there are inadequate community resources to deal with this population of offenders. Yet, the civil commitment process envisions their eventual release, since civil commitment is generally viewed as a temporary confinement and treatment option and not a permanent incarceration solution.

Eighth, the Task Force further recommends that adequate financial resources be appropriated to ensure that sex; offenders who are released from criminal prison incarceration or placed on probation receive intensive probation and community supervision.

Caseload levels for probation officers are currently at unacceptably high levels to ensure adequate supervision of this population.

The Task Force believes that while intensive supervision can't guarantee the public's safety, it can do a better job of protecting the public than traditional probation or community supervision.

For example, the Task Force heard from the director of one intensive supervision program that no sex offender in their program has committed a new sex

offense while under intensive supervision. This program limits agent's caseloads to 15 offenders; requires multiple visits per week with the offender, including a minimum, of two visits per week at the offender's residence; and imposes unannounced random drug testing.

Ninth, the Task Force further recommends modifications to Minnesota's sex offender registration laws by (a) requiring perpetrators of sexual conduct crimes who come to Minnesota from other states to register; (b) increasing the penalty for failing to register .to a felony for second and subsequent violations of the sex offender registration law; and (c) increasing the length of time that pedophiles must remain registered.

These measures will provide an added level of safety: to the public by strengthening Minnesota's sex offender registration law and by being able to provide law enforcement with information that is not now otherwise available.

For example, under current law sex offenders coming from other states need to register only if they come to Minnesota under an interstate compact.

Tenth, while much of the work of the Task Force has focused on specific criminal or civil law changes, the Task Force also recognizes that the long-term solution to the problem of sexual crimes rests in prevention measures, and early intervention and treatment. The Task Force wants to strongly urge policymakers not to lose sight of this fact.

Nor must they forget that while thousands of dollars are spent on incarcerating offenders, services for victims are no less important and should be

adequately funded. Finally, as a matter of general principle the Task Force believes that even though Minnesota does have the sexual psychopathic personality civil commitment process that can be used for certain offenders when it is appropriate, the long-term goal of policymakers should be to diminish the use of that mental health system and increase the use of the criminal justice system to deal with those offenders. This will save the state scarce financial resources and at the same time make those individuals criminally responsible for their behavior, which should be Minnesota's long-term goal.